

7 FAM 1130

ACQUISITION OF U.S. CITIZENSHIP BY BIRTH ABROAD TO U.S. CITIZEN PARENT

(CT:CON-522; 07-08-2014)
(Office of Origin: CA/OCS/L)

7 FAM 1131 BASIS FOR DETERMINATION OF ACQUISITION

7 FAM 1131.1 Authority

7 FAM 1131.1-1 Federal Statutes

(CT:CON-349; 12-13-2010)

- a. Acquisition of U.S. citizenship by birth abroad to a U.S. citizen parent is governed by Federal statutes. Only insofar as Congress has provided in such statutes, does the United States follow the traditionally Roman law principle of "jus sanguinis" under which citizenship is acquired by descent (see 7 FAM 1111 a(2)).
- b. Section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) gives the Secretary of State the responsibility for the administration and enforcement of all nationality laws relating to "the determination of nationality of a person not in the United States."

7 FAM 1131.1-2 Applicable Statute

(TL:CON-68; 04-01-1998)

The law applicable in the case of a person born abroad who claims citizenship is the law in effect when the person was born, unless a later law applies retroactively to persons who had not already become citizens. Instructions in 7 FAM 1130 will note when a law is retroactive.

7 FAM 1131.1-3 Delegation of Authority

(TL:CON-68; 04-01-1998)

Consular officers may decide cases involving acquisition of citizenship by birth abroad. Designated nationality examiners may also do so in connection with

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U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

providing passport and related services. If guidance is needed, a case may be submitted to the Department (CA/OCS) for decision or advisory opinion.

7 FAM 1131.2 Prerequisites for Transmitting U.S. Citizenship

(TL:CON-68; 04-01-1998)

Since 1790, there have been two prerequisites for transmitting U.S. citizenship to children born abroad:

- (1) At least one natural parent must have been a U.S. citizen when the child was born. The only exception is for a posthumous child.
- (2) The U.S. citizen parent(s) must have resided or been physically present in the United States for the time required by the law in effect when the child was born.

7 FAM 1131.3 Adoption Does Not Confer U.S. Citizenship

(CT:CON-349; 12-13-2010)

- a. Adoption of an alien minor by an American does not confer U.S. citizenship on the child. Adoption, however, is one way in which a U.S. citizen father can legitimate his natural child born out of wedlock for purposes of transmitting citizenship (see 7 FAM 1133.4-2 c(4)).
- b. For provisions that govern the naturalization of adopted children, see 7 FAM 1157.

7 FAM 1131.4 Blood Relationship Essential

7 FAM 1131.4-1 Establishing Blood Relationship

(CT:CON-349; 12-13-2010)

- a. The laws on acquisition of U.S. citizenship through a parent have always contemplated the existence of a blood relationship between the child and the parent(s) through whom citizenship is claimed. It is not enough that the child is presumed to be the issue of the parents' marriage by the laws of the jurisdiction where the child was born. Absent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired. The burden of proving a claim to U.S. citizenship, including blood relationship and legal relationship, where applicable, is on the person making such claim.
- b. Applicants must meet different standards of proof of blood relationship

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

depending on the circumstances of their birth:

- (1) The statutes do not specify a standard of proof for persons claiming birth in wedlock to a U.S. citizen parent or out of wedlock to an American mother. The Department's regulations also do not explicitly establish a standard of proof. The Department applies the general standard of a preponderance of the evidence. This standard means that the evidence of blood relationship is of greater weight than the evidence to the contrary. It is credible and convincing and best accords with reason and probability. It does not depend on the volume of evidence presented.
 - (2) Section 309(a) INA (8 U.S.C. 1409(a)), as amended on November 14, 1986, specifies that the blood relationship of a child born out of wedlock to a U.S. citizen father must be established by clear and convincing evidence. This standard generally means that the evidence must produce a firm belief in the truth of the facts asserted that is beyond a preponderance but does not reach the certainty required for proof beyond a reasonable doubt. There are no specific items of evidence that must be presented. Blood tests are not required, but may be submitted and can help resolve cases in which other available evidence is insufficient to establish the relationship. For the procedures for establishing legal relationship to or legitimation by a citizen father once blood relationship has been proven, see 7 FAM 1133.4.
- c. Children born in wedlock are generally presumed to be the issue of that marriage. This presumption is not determinative in citizenship cases, however, because an actual blood relationship to a U.S. citizen parent is required. If doubt arises that the citizen "parent" is related by blood to the child, the consular officer is expected to investigate carefully. Circumstances that might give rise to such a doubt include:
- (1) Conception or birth of a child when either of the alleged biological parents was married to another;
 - (2) Naming on the birth certificate, as father and/or mother, person(s) other than the alleged biological parents; and
 - (3) Evidence or indications that the child was conceived at a time when the alleged father had no physical access to the mother.
- d. If the child was conceived or born when the mother was married to someone other than the man claiming paternity, a statement from the man to whom the mother was married disavowing paternity, a divorce or custody decree mentioning certain of her children but omitting or specifically excluding the child in question, or credible statements from neighbors or friends having knowledge of the circumstances leading up to the birth may be required as evidence bearing on actual natural paternity.
- e. Suggestions for developing cases that involve questionable blood relationships are given in the following sections.

7 FAM 1131.4-2 Citizenship in Artificial and In Vitro Insemination Cases

(CT:CON-349; 12-13-2010)

- a. A child born abroad to a foreign surrogate mother who is the natural/blood mother (i.e., who was the egg-donor) and whose claimed father was a U.S. citizen is treated for citizenship purposes as a child born out of wedlock. The procedures for proving citizenship under section 309(a) INA (8 U.S.C. 1409(a)), as amended apply (see 7 FAM 1133.4-3 b). The blood relationship between the child and the putative U.S. citizen father must be proven. Additional evidence beyond the child's birth certificate and statement of the parents is required. Certification by appropriate medical authorities of all facts and circumstances surrounding the entire insemination procedure is required. Examples of appropriate supporting documentation include hospital records from the facility where the sperm donation was made, affidavit from the doctor who performed the operation, and possibly blood tests.
- b. A child born abroad to a foreign surrogate mother who was not the egg-donor and whose claimed mother (egg-donor) and/or claimed father was a U.S. citizen is treated for citizenship purposes either as a child born out of wedlock to a U.S. citizen mother (if the sperm donor was not a U.S. citizen) or as the child of two U.S. citizens. The applicable sections of law generally are sections 309(c) and 301 INA.
- c. The status of the surrogate mother is immaterial to the issue of citizenship transmission. The child is considered the offspring of the biological parents and the appropriate INA section is applied. Evidence to establish the blood relationship between the child and the biological parents would be similar to that mentioned in 7 FAM 1131.4-2 a.

7 FAM 1131.5 Suspected False or Fraudulent Citizenship Claim of Minor Child

7 FAM 1131.5-1 Types of False or Fraudulent Claims

(TL:CON-68; 04-01-1998)

False or fraudulent citizenship claims involving children not related by blood to the U.S. citizens claiming to be their parents can involve false claims of paternity or false claims of maternity. When a married couple falsely claims that a child is theirs for purposes of citizenship documentation, it is sometimes referred to as adoption fraud. These fraudulent claims are often detected when the alleged parents apply on behalf of a child for a Consular Report of Birth Abroad or other documentation as a U.S. citizen.

7 FAM 1131.5-2 General Guidance

(TL:CON-68; 04-01-1998)

Parentage fraud issues must be handled sensitively. Necessary efforts to enforce the citizenship laws may result in the Department being accused of threatening the family unit and of jeopardizing the welfare of the child. Cases of this kind often have public relations ramifications or give rise to congressional interest. All such cases must be handled in a timely manner with consideration for the family. Posts should provide information on visa eligibility in cases where it has been proven that the child has no claim to U.S. citizenship and the parents wish to take the child to the United States.

7 FAM 1131.5-3 Paternity Issues

(CT:CON-474; 08-19-2013)

- a. Issues of False or Fraudulent Paternity Claims: Paternity fraud is a false claim to citizenship filed on behalf of a child said to have been born to a U.S. citizen father who is not, in fact, the biological father of the child. Because a child born out of wedlock to a U.S. citizen mother generally acquires U.S. citizenship through the mother, paternity fraud is usually an issue only in cases where the claimed natural mother is an alien. In some cases, the alleged father is convinced that he is the biological father in which case the claim is properly considered false rather than fraudulent. In other cases, he knows that he is not the father, and conscious fraud is involved. The following factors may indicate the possibility of paternity fraud:
 - (1) The child was conceived or born out of wedlock;
 - (2) There is doubt that the child was conceived at a time when the father had physical access to the mother;
 - (3) The mother admits, or there are other indications, that she had physical relationships with other men around the time of conception;
 - (4) The child allegedly was born prematurely, but its weight at birth appears to indicate that it was a full-term baby;
 - (5) The physical characteristics of the child and of the alleged father do not seem compatible; or
 - (6) There are discrepancies in the birth records.
- b. How to Resolve Doubts: To ascertain the true circumstances surrounding the child's conception and birth, the consular officer may wish to:
 - (1) Obtain available records showing periods of time when the alleged father had physical access to the mother;
 - (2) Interview the parents separately to determine any differences in their respective stories as to when and where the child was conceived. Often, in

UNCLASSIFIED (U)

separate interviews, one party will admit that the American citizen is not the father;

- (3) Interview neighbors and friends to determine the facts as understood within the local community; and
- (4) Advise blood testing if the couple continues to pursue the claim even though the facts as developed seem to disprove it. The propriety of requesting blood or DNA testing is discussed in 7 FAM 1100 Appendix A. If the post disapproves the application, enter the "N" lookout in the Consular Lookout and Support System (CLASS) using the Passport Lookout Tracking System (PLOTS) as explained in 7 FAM 1300 Appendix A and forward the application to Passport Services for scanning and record keeping in accordance with 7 FAM 1337.

7 FAM 1131.5-4 Maternity Issues

(CT:CON-522; 07-08-2014)

- a. Indications of Fraudulent Maternity Claims; "Adoption Fraud": Cases in which an unmarried U.S. citizen woman falsely claims a child as her *biological* child for citizenship purposes are relatively rare but can occur. False maternity claims are more often made by married couples, where the *alleged mother* is a U.S. citizen. The *spouse* may or may not be a U.S. citizen. The couple falsely claims that a foreign-born child is their *biological* child, when typically, in fact, they have adopted the child or, otherwise, obtained physical custody of it. The false claim that the child is theirs is made to avoid adoption and/or visa procedures and to fraudulently document the child as a U.S. citizen. This is often referred to as "fraud by adoption"—a false claim to citizenship filed on behalf of a child by the alleged biological parents, who, in fact, share no blood relationship with the child and, therefore, could not confer citizenship on the child. An interview with the alleged parents may disclose some or all of these fraud indicators:
 - (1) The alleged mother arrived in the foreign country a few days before the child's birth;
 - (2) The alleged mother is *likely beyond child-bearing years* and this is a first child/or the couple has been married *or living together* for many years without children;
 - (3) The child was born in a private home with the *alleged* mother unattended or with only a midwife present;
 - (4) The alleged mother claims to have had no prenatal care and not to have known the baby's due date;
 - (5) The alleged mother claims that the child was born prematurely; and
 - (6) The physical characteristics of the child and of the alleged parents do not seem compatible.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- b. How To Resolve Doubts: If the post has any doubts about the child's parentage, further inquiry and documentation are required. Posts should take as many of the following steps as seem appropriate or necessary:
- (1) Establish that pregnancy did exist, and request copies of prenatal and post-natal records;
 - (2) Request the authorization letter, if any, given to the woman by her physician stating that she could fly without endangering her health. Airlines usually refuse to assume responsibility for a woman who has reached her seventh month of pregnancy and often request such a letter before allowing a pregnant woman on board;
 - (3) Investigate the clinic or hospital where the birth allegedly occurred to determine if it is a legitimate medical facility. Request medical records to determine whether the woman was a patient, and is the biological mother of the child;
 - (4) When the consular officer strongly suspects that a newborn child was adopted, request that the woman undergo a physical examination as soon as possible by a physician whom the post believes to be reliable. Physical evidence of pregnancy and childbirth may be obvious for only a few weeks after the birth;
 - (5) Contact the midwife or doctor who attended the birth to confirm statements given by the alleged parents; and
 - (6) If doubts remain about the child's blood relationship to the alleged parents, blood or DNA tests might be useful (see 7 FAM 1100 Appendix A.)

7 FAM 1131.6 Nature of Citizenship Acquired by Birth Abroad to U.S. Citizen Parents

7 FAM 1131.6-1 Status Generally

(TL:CON-68; 04-01-1998)

Persons born abroad who acquire U.S. citizenship at birth by statute generally have the same rights and are subject to the same obligations as citizens born in the United States who acquire citizenship pursuant to the 14th Amendment to the Constitution. One exception is that they may be subject to citizenship retention requirements.

7 FAM 1131.6-2 Eligibility for Presidency

(TL:CON-68; 04-01-1998)

- a. It has never been determined definitively by a court whether a person who acquired U.S. citizenship by birth abroad to U.S. citizens is a natural-born citizen within the meaning of Article II of the Constitution and, therefore,

7 FAM 1130 Page 7 of 69

UNCLASSIFIED (U)

eligible for the Presidency.

- b. Section 1, Article II, of the Constitution states, in relevant part that "No Person except a natural born Citizen...shall be eligible for the Office of President."
- c. The Constitution does not define "natural born". The "Act to establish an Uniform Rule of Naturalization", enacted March 26, 1790, (1 Stat. 103,104) provided that, "...the children of citizens of the United States, that may be born ... out of the limits of the United States, shall be considered as natural born citizens: Provided that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States."
- d. This statute is no longer operative, however, and its formula is not included in modern nationality statutes. In any event, the fact that someone is a natural born citizen pursuant to a statute does not necessarily imply that he or she is such a citizen for Constitutional purposes.

7 FAM 1131.6-3 Not Citizens by "Naturalization"

(CT:CON-474; 08-19-2013)

Section 101(a)(23) INA (8 U.S.C. 1101(a)(23)) provides that the term "naturalization" means "the conferring of nationality of a state upon a person after birth, by any means whatsoever." Persons who acquire U.S. citizenship at birth by birth abroad to a U.S. citizen parent or parents who meet the applicable statutory transmission requirements are not considered citizens by naturalization.

7 FAM 1131.7 Citizenship Retention Requirements

(CT:CON-349; 12-13-2010)

- a. Persons who acquired U.S. citizenship by birth abroad were not required to take any affirmative action to keep their citizenship until May 24, 1934, when a new law imposed retention requirements on persons born abroad on or after that date to one U.S. citizen parent and one alien parent.
- b. Retention requirements continued in effect until October 10, 1978, when section 301(b) INA was repealed. Because the repeal was prospective in application, it did not benefit persons born on or after May 24, 1934, and before October 10, 1952 (see 7 FAM 1100 Appendix L).
- c. Persons born abroad on or after October 10, 1952, are not subject to any conditions beyond those that apply to all citizens.
- d. Persons whose citizenship ceased as a result of the operation of former section 301(b) were provided a means of regaining citizenship in March 1995 by an amendment to section 324 INA (8 U.S.C. 1435). A more detailed discussion of the retention requirements and remedies for failure to comply with them is provided in 7 FAM 1100 Appendix L.

7 FAM 1131.8 Report on Applicant Who Has Not Acquired U.S. Citizenship

(CT:CON-349; 12-13-2010)

When the post determines that a person applying for documentation as a U.S. citizen has no claim to U.S. citizenship at birth, the post should enter an "N" looking in CLASS via PLOTS in accordance with 7 FAM 1300 Appendix A. A discussion of the various types of lookouts is found in 7 FAM 1330.

7 FAM 1131.9 Birth in Panama; Special Provisions

(TL:CON-68; 04-01-1998)

- a. Congress has enacted special legislation governing the conditions under which U.S. citizenship may be acquired by birth in Panama (see also 7 FAM 1120 for legislation relating to the Canal Zone). This legislation does not apply to all children born in Panama, but only to those born to U.S. citizens employed by the U.S. Government or the Panama Railroad Company. Section 303(b) INA (8 U.S.C. 1403(b)) states that: "Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States."
- b. This provision is the same as those in section 203(b) NA and Section 2 of the Act of August 4, 1937 (50 Stat. 558). Because it applies retroactively, it is not necessary to refer to the prior versions for citizenship adjudication purposes; they are of historical interest only. Under all three sections, a child born in Panama on or after February 26, 1904, to a U.S. citizen employee of the U.S. Government or the Panama Railroad Company is automatically a U.S. citizen at birth even if the citizen parent had never previously resided or been physically present in the United States. The child is not required to take any particular steps in order to retain citizenship.
- c. Legitimation is required for a child born out of wedlock to a male U.S. citizen engaged in qualifying employment. A child born out of wedlock to an American woman employed by the U.S. Government or the Panama Railroad Company acquires U.S. citizenship at birth.
- d. Until August 4, 1937, there was no special law relating to Americans born in Panama. Acquisition of citizenship was governed by Section 1993, Revised Statutes which on May 24, 1934, was amended to include retention requirements. Those retention requirements were superseded by the August 4, 1937 Act, however, because it applied retroactively, as does its modern version, section 303(b) INA.
- e. In cases outside the scope of section 303(b) INA, the general laws that govern

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

the acquisition of U.S. citizenship by birth abroad apply.

- f. Evidence to prove a claim to U.S. citizenship under section 303(b) INA would include:
 - (1) The child's Panamanian birth certificate or other proof of the child's birth to a U.S. citizen (the blood relationship must be established);
 - (2) The parents' marriage certificate, if applicable; and
 - (3) Proof of the citizen parent's employment by the U.S. Government or the Panama Railroad Company at the time of the child's birth.

7 FAM 1132 EVOLUTION OF KEY ACQUISITION STATUTES

7 FAM 1132.1 March 26, 1790

(TL:CON-68; 04-01-1998)

- a. The First Congress enacted "An Act to Establish an Uniform Rule of Naturalization" (1 Stat. 103,104) that stated, in part, that: the children of citizens of the United States, that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural born citizens; Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.
- b. This Act was repealed by the Act of January 29, 1795.

7 FAM 1132.2 January 29, 1795

(TL:CON-68; 04-01-1998)

- a. This Act (1 Stat. 414) repealed the Act of March 26, 1790, but in section 3, adopted essentially the same provision for acquiring U.S. citizenship by birth abroad.
- b. This Act was repealed by the Act of April 14, 1802.

7 FAM 1132.3 April 14, 1802

(TL:CON-68; 04-01-1998)

- a. Section 4 of this Act (2 Stat. 153,155) stated, in part, that: "the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: Provided, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States."
- b. This Act's formula of permitting transmission of citizenship by "persons who

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

now are, or have been citizens" raised a question whether persons who subsequently became citizens by birth or naturalization could transmit citizenship to their children born abroad. The right of such persons to transmit was clearly provided in the Act of February 10, 1855.

7 FAM 1132.4 February 10, 1855

(TL:CON-68; 04-01-1998)

- a. On this date, Congress enacted "An Act to Secure the Right of Citizenship to Children of Citizens of the United States Born Out of the Limits Thereof," (10 Stat.604).
- b. It stated, in part, that: "persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: Provided, however, that the rights of citizenship shall not descend to persons whose fathers never resided in the United States."
- c. The Act of February 10, 1855 did not repeal the Act of April 14, 1802.

7 FAM 1132.5 Section 1993, Revised Statutes of 1878

(TL:CON-68; 04-01-1998)

- a. The provisions of the Act of 1802 and the Act of 1855 were codified as Section 1993 of the Revised Statutes of 1878. From 1878 to 1934, Section 1993, Rev. Stat., stated that: All children heretofore or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.
- b. Section 1993 permitted the transmission of citizenship only by U.S. citizen fathers until it was amended prospectively on May 24, 1934, to permit transmission by U.S. citizen mothers. (The similar rights of women were also addressed by the 1994 amendment to section 301 INA (see 7 FAM 1133.2-1).)

7 FAM 1132.6 May 24, 1934

(TL:CON-68; 04-01-1998)

- a. Section 1993 (48 Stat. 797) was amended by the Act of May 24, 1934, to permit American women to transmit U.S. citizenship to their children born abroad, regardless of the father's citizenship.
- b. The amended Section 1993 was in effect from May 24, 1934, at noon Eastern Standard Time until January 12, 1941. The text of the amended law is shown in 7 FAM 1135.6-1. It was repealed, and superseded by the Nationality Act of

7 FAM 1130 Page 11 of 69

UNCLASSIFIED (U)

1940.

7 FAM 1132.7 January 13, 1941

(TL:CON-68; 04-01-1998)

- a. The Nationality Act of 1940 (NA) (54 Stat. 1137) went into effect on January 13, 1941. Section 201 NA addressed acquisition of citizenship by birth abroad. The pertinent text of Section 201 NA is shown in 7 FAM 1134.2.
- b. The NA was repealed and superseded by the Immigration and Nationality Act of 1952.

7 FAM 1132.8 December 24, 1952

(TL:CON-68; 04-01-1998)

- a. The Immigration and Nationality Act (INA) of 1952, the current law, has been in effect since December 24, 1952.
- b. For original and amended provisions of this act, see 7 FAM 1133.2-1 and 7 FAM 1133.2-2.

7 FAM 1132.9 1986, 1988, 1994, and 1997 Amendments of INA

(CT:CON-204; 11-01-2007)

- a. The citizenship provisions of the INA have been amended by the following significant Public Laws:
 - (1) The Immigration and Nationality Act Amendments of 1986 (Public Law 99-653), effective November 14, 1986;.
 - (2) The Immigration Technical Corrections Act of 1988 (Public Law 100-525), effective October 24, 1988;
 - (3) The Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416), effective October 25, 1994; and,
 - (4) Public Law 105-38 of August 8, 1997, which amended Section 102 of Public Law 103-416.
- b. The relevant parts of these statutes:
 - (1) Reduced the amount of U.S. physical presence required to transmit citizenship to children born abroad;
 - (2) Changed the procedures by which children born abroad out of wedlock to an American father can acquire citizenship;
 - (3) Enabled children born abroad prior to May 24, 1934, to acquire U.S. citizenship through U.S. citizen mothers;

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (4) Provided a means for persons whose citizenship ceased through failure to comply with the retention requirements to have their citizenship restored; and
- (5) Specified the effective dates of various amended provisions.

7 FAM 1133 IMMIGRATION AND NATIONALITY ACT (INA) OF 1952

7 FAM 1133.1 Effective Date

(TL:CON-51; 02-15-1991)

The Immigration and Nationality Act, as originally enacted, went into effect at 12:01 a.m., Eastern Standard Time, on December 24, 1952.

7 FAM 1133.2 Citizenship at Birth Abroad Under INA

(TL:CON-68; 04-01-1998)

Section 301 INA replaced section 201 NA on acquisition of citizenship and nationality at birth abroad. In particular, section 301(a)(7) INA, now section 301(g), replaced section 201(g) NA on acquisition of citizenship by birth abroad to a U.S. citizen parent and an alien parent.

7 FAM 1133.2-1 Section 301 Text as of October 25, 1994

(CT:CON-349; 12-13-2010)

- a. As amended by Public Law 103-416 on October 25, 1994, section 301 states as follows with respect to persons born abroad:

“Section 301. The following shall be nationals and citizens of the United States at birth:

- (c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;
- (d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;
- (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and

- (h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such a person, had resided in the United States.”
- b. Sections 301(c) and (d) were numbered 301(a)(3) and (4), respectively, before October 10, 1978. Section 301(g) is an amended version of former 301(a)(7). Pursuant to section 23(d) of Public Law 99-653, the Immigration and Nationality Act Amendments of 1986, the provisions of section 301(g) quoted in 7 FAM 1133.2-2 a apply to persons born on or after November 14, 1986.
- c. Section 101(a) of Public Law 103-416 (Immigration and Nationality Technical Corrections Act of 1994) (INTCA) added paragraph (h) to section 301 INA for the purpose of providing equal treatment to women in conferring citizenship to children born abroad. Since new paragraph (h) is retroactive, subsections (b) through (d) of section 101 of INTCA also addressed questions that arise as a result as follows:
- d. WAIVER OF RETENTION REQUIREMENTS - Any provision of law (including section 301(b) of the Immigration and Nationality Act (as in effect before October 10, 1978) and the provisos of section 201(g) of the Nationality Act of 1940 that provided for a person's loss of citizenship or nationality if the person failed to come to, or reside or be physically present in, the United States shall not apply in the case of a person claiming United States citizenship based on such person's descent from an individual described in section 301(h) of the Immigration and Nationality Act (as added by subsection (a)).
- e. RETROACTIVE APPLICATION:

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (1) Except as provided in paragraph (2), the immigration and nationality laws of the United States shall be applied (to persons born before, on, or after the date of the enactment of this Act) as though the amendment made by subsection (a), and subsection (b), had been in effect as of the date of their birth, except that the retroactive application of the amendment and that subsection shall not affect the validity of citizenship of anyone who has obtained citizenship under section 1993 of the Revised Statutes (as in effect before the enactment of the Act of May 24, 1934 (48 Stat. 797)).
 - (2) The retroactive application of the amendment made by subsection (a), and subsection (b), shall not confer citizenship on, or affect the validity of any denaturalization, deportation or exclusion action against, any person who is or was excludable from the United States under section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)) (or predecessor provision) or who was excluded from, or who would not have been eligible for admission to, the United States under the Displaced Persons Act of 1948 or under section 14 of the Refugee Relief Act of 1953.
- f. APPLICATION TO TRANSMISSION OF CITIZENSHIP - This section, the amendments made by this section, and any retroactive application of such amendments shall not effect (sic) any residency or other retention requirements for citizenship as in effect before October 10, 1978, with respect to the transmission of citizenship.

7 FAM 1133.2-2 Original Provisions and Amendments to Section 301

(CT:CON-317; 12-08-2009)

- a. Section 301 as Effective on December 24, 1952: When enacted in 1952, section 301 required a U.S. citizen married to an alien to have been physically present in the United States for ten years, including five after reaching the age of fourteen, to transmit citizenship to foreign-born children. The ten-year transmission requirement remained in effect from 12:01 a.m. EDT December 24, 1952, through midnight November 13, 1986, and still is applicable to persons born during that period. As originally enacted, section 301(a)(7) stated: Section 301. (a) The following shall be nationals and citizens of the United States at birth: (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.
- b. Extension of Section 301 to Certain Children of Armed Forces Persons Public

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Law 430 of March 16, 1956 (70 Stat. 50, 8 U.S.C. 1401a) extended the application of Section 301(a)(7) (without amending it) to certain children of a citizen who served in the Armed Forces. It provides as follows: "Section 301(a)(7) (now 301(g)) of the Immigration and Nationality Act shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201 (g) or (i) of the Nationality Act of 1940. (The reference to section 301(a)(7), was changed to 301(g) by Section 18(u)(2) of the Immigration and Nationality Act Amendments of 1981, Public Law 97-116 (Dec. 29, 1981).)

- c. November 6, 1966, Addition of Proviso Relating to Compilation of Physical Presence For Transmission The Act of November 6, 1966, Public Law 89-770, (80 Stat. 1322) added additional qualifying U.S. physical presence categories to the 301(a)(7) proviso (see 7 FAM 1133.2-1).
- d. October 10, 1978, Elimination of Retention Requirements: Public Law 95-432, (92 Stat. 1046), effective October 10, 1978, repealed subsections (b), (c), and (d) of section 301 thus eliminating the physical presence requirement for retention of U.S. citizenship. This change was prospective in nature. It did not reinstate as citizens those who had ceased to be citizens by the operation of section 301(b) as previously in effect. Sections 301(a)(3), (4), and (7) were renumbered 301(c), (d), and (g), respectively.
- e. November 14, 1986, Liberalization of Transmission Requirements: Section 12 of the Immigration and Nationality Act Amendments of 1986 (INAA) (Public Law 99-653 of November 14, 1986, 100 Stat. 3657) changed the parental citizenship transmission requirements from ten years of U.S. physical presence, five of which were after the age of 14, to five years of U.S. physical presence, two of which were after age 14. These provisions apply only to persons born on or after November 14, 1986.
- f. October 24, 1988, Retroactivity of Amendment
 - (1) The Immigration Technical Corrections Act of 1988 (Public Law 100-525 of October 24, 1988) added a new section 23 to the Immigration and Nationality Act Amendments of 1986 which states: SEC. 23. (d) The amendment made by section 12 shall apply to persons born on or after November 14, 1986.
 - (2) The effect of this amendment is to apply the reduced physical presence transmission requirements of the amended section 301(g) INA to persons born anywhere outside the United States at any time on November 14, 1986, rather than just to those born after 2:07 p.m. EST when the INAA originally was effective.

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- g. October 25, 1994, Equalization of Treatment of Women and Provisions for Restoration of Citizenship. The Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416 of October 25, 1994) added paragraph (h) to section 301 INA allowing persons born abroad prior to May 24, 1934, to U.S. citizen mothers who had previously resided in the United States to acquire U.S. citizenship at birth with no retention requirements. This Act also added subsection (d) to section 324 INA allowing persons whose citizenship had ceased by operation of the former section 301(b) INA to have their citizenship restored prospectively by taking an oath of allegiance to the United States. The amendment to section 324 went into effect on March 1, 1995.

7 FAM 1133.3 Residence and Physical Presence Requirement

(TL:CON-51; 02-15-1991)

The INA specifies that residence or a period of physical presence in the United States is required for transmitting U.S. citizenship on or after December 24, 1952.

7 FAM 1133.3-1 Requirements of Section 301 INA

(CT:CON-421; 10-05-2012)

- a. Birth to Two U.S. Citizens
- (1) The content of Section 301(c) INA (formerly section 301(a)(3) INA) is virtually identical to that of section 201(c) NA, which it replaced.
 - (2) A child born abroad to two U.S. citizens acquires U.S. citizenship at birth if, before the child's birth, one of the parents had a residence in the United States or its outlying possessions. No specific period of residence is required. See 7 FAM 1133.5 for specific guidance for determining acquisition of U.S. citizenship by children born abroad to two U.S. citizen parents under INA 301(c)
- b. Birth to Citizen and National
- (1) To transmit U.S. citizenship to a foreign born child under section 301(d) INA (8 U.S.C. 1401(d)) (formerly section 301(a)(4) INA), a U.S. citizen parent married to a U.S. national (a person owing permanent allegiance to the United States who is neither a U.S. citizen nor an alien) must have been in the United States or an outlying possession for a continuous period of 1 year at any time before the child's birth.
 - (2) Any absence, even for U.S. military service, breaks the continuity of the period of physical presence.
- c. Birth to Citizen and Alien: Unlike section 301(d), section 301(g) (formerly section 301(a)(7) INA) does not require a continuity of stay. However, on the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

whole, its requirements for transmitting U.S. citizenship to the foreign-born child of a U.S. citizen and an alien are much more stringent: for children born prior to November 14, 1986, the U.S. citizen parent must have had ten years of physical presence, five of which were after reaching age 14, in the United States or its outlying possessions; for children born on or after November 14, 1986, to transmit citizenship the U.S. citizen parent needs five years of physical presence, two of which were after age 14, in the United States or one of its possessions.

7 FAM 1133.3-2 Reasons for Requiring Parent's U.S. Physical Presence

(TL:CON-68; 04-01-1998)

- a. Based on the 1940 Nationality Act's definition of "residence," a person could transmit U.S. citizenship to a foreign-born child after 10 years' "residence" in the United States or its outlying possessions even though that person may have been in the United States or its outlying possessions for only a small part of that time.
- b. The substitution of 10 years "physical presence" (or 5 years for children born on or after November 14, 1986) required by the Immigration and Nationality Act of 1952 for the 10 years "residence" required by the Nationality Act of 1940 was another attempt to ensure that a foreign-born U.S. citizen would grow up subject to American influences. With a long period of physical presence, Congress deemed that the citizen parent would have spent enough time in the United States to absorb American customs and values which, in turn, would be transmitted to the child.

7 FAM 1133.3-3 What Constitutes U.S. Physical Presence

(CT:CON-349; 12-13-2010)

- a. Current Practice
 - (1) The Immigration and Nationality Act does not define "physical presence," but the Department interprets it as actual bodily presence. Any time spent in the United States or its outlying possessions, even without maintaining a U.S. residence, may be counted toward the required physical presence.
 - (2) Naturalized citizens may count any time they spent in the United States or its outlying possessions both before and after being naturalized, regardless of their status. Even citizens who, prior to lawful entry and naturalization, had spent time in the United States illegally can include that time.
 - (3) Residents of Canada and Mexico who commute daily to school or work in the United States may count the time they spend in the United States each day toward the requirement. Conversely, absences, no matter how short, from the United States and its outlying possessions cannot be counted as

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

U.S. physical presence even if a U.S. residence is maintained, unless the proviso of 301(g) applies (i.e., the absence is as a result of U.S. military service, employment with the U.S. Government or an international organization as provided therein).

- (4) The Department cannot waive or reduce the required period of physical presence.
 - (5) For methods of computing a person's periods of physical presence in the United States, see 7 FAM 1133.3-4.
- b. What Can and Cannot Be Counted as Residence or Physical Presence in the United States or Its Outlying Possessions. For purposes of the various subsections of section 301 INA (8 U.S.C. 1401), the Department holds that:
- (1) Residence or physical presence in the Philippines from April 11, 1899, to July 4, 1946, (when those islands were an outlying possession of the United States) and in other U.S. possessions (except the Canal Zone) before December 24, 1952, can be counted toward the residence or physical presence required under the subsections of section 301 INA;
 - (2) After December 24, 1952, physical presence in the U.S. territories or possessions named in section 101(a)(38) INA (8 U.S.C. 1101(a)(38)) is considered physical presence in the United States or its outlying possessions;
 - (3) The U.S. possessions not named are considered as foreign countries for citizenship purposes;
 - (4) Effective November 3, 1986, physical presence in the Commonwealth of the Northern Mariana Islands constitutes physical presence in the United States for purposes of section 301(g) INA;
 - (5) Time spent on ships located within U.S. internal waters can be counted as physical presence in the United States. There is a legal question as to whether time spent in waters within the 3-mile limit of the U.S. territorial sea can be counted as U.S. physical presence. Cases in which this issue arises should be referred to the Department (CA/OCS) for guidance (see 7 FAM 1113 and 7 FAM 1114);
 - (6) Time spent on a U.S.-registered ship outside U.S. territorial waters cannot be counted as physical presence in the United States (Section 330 INA (8 U.S.C. 1441) permits time spent on U.S.-registered ships to count as U.S. residence or physical presence for purposes of naturalization but not for other purposes); and that
 - (7) Time spent on voyages defined as "coastal" by the Coast Guard (which maintains records of U.S. seamen's voyages) is open to legal interpretation. "Coastal" voyages are those between ports in the same State or adjacent States, which usually do not go outside the 3-mile limit of the territorial sea. Cases in which this issue arises should be referred to

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

the Department (CA/OCS) for guidance. Time spent on voyages defined by the Coast Guard as "foreign" or "coastwise" (those from one U.S. port to another in a non-adjacent State in which the vessel travels outside U.S. territorial waters) are not considered physical presence in the United States.

c. Employment Qualifying as Physical Presence in the United States

- (1) When the Immigration and Nationality Act went into effect, the only absences from the United States that could be counted toward the physical presence required to transmit U.S. citizenship under 301(a)(7), now 301(g) INA were those due to assignments abroad in the U.S. Armed Forces. At the Department's request, section 301(a)(7) INA was amended in 1966 to include the proviso shown in 7 FAM 1133.2-1 extending this benefit to employees of the U.S. Government and designated international organizations and dependent children. The 1966 amendment was retroactive, benefiting any qualified person born on or after December 24, 1952.
- (2) Since 1966, many questions have arisen about the proper interpretation of various parts of the proviso of section 301(g) INA. Notwithstanding any prior conflicting decisions about how the proviso applies in particular cases, the following interpretations should be followed (see 7 FAM 1133.3-3 d, 7 FAM 1133.3-3 e, 7 FAM 1133.3-3 f, and 7 FAM 1133.3-3 g). Any cases in which a previous decision appears to conflict with this guidance may be referred to the Department (CA/OCS) for review.
- (3) Residence abroad in any capacity mentioned in the proviso can count toward and even completely satisfy the required period of physical presence in the United States. A citizen who has never been in the United States may therefore transmit citizenship if the citizen has met the physical presence requirement as a result of operation of the proviso.

d. Interpretation of "Periods of Honorable Service in the Armed Forces of the United States"

- (1) The phrase "any periods of honorable service in the Armed Forces of the United States," includes all periods of honorable foreign service in the U.S. Armed Forces from the date of enlistment, whether the enlistment occurred in the United States or abroad.
- (2) A naturalized U.S. citizen who, as an alien, served honorably abroad in the U.S. Armed Forces may count the overseas service as physical presence in the United States for purposes of transmitting citizenship.
- (3) The Department and the Immigration and Naturalization Service hold that members of Reserve components of the U.S. Armed Forces may count as U.S. physical presence all time served abroad on active duty, except for training, provided the service was honorable. Non-duty periods of foreign residence or travel while in the Reserves do not qualify (5 U.S.C. 2105(d)).

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Other members of uniformed services are considered U.S. Government employees pursuant to 5 U.S.C. 2105(a).

- (4) Only periods of honorable U.S. military service abroad count as periods of physical presence in the United States. However, some persons who have received other than honorable discharges may have some periods of honorable service that can be confirmed by the military authorities.
- (5) In 1977, the General Counsel, Selective Service System, informed the Department that alternate service performed by conscientious objectors is not considered military service or employment by the U.S. Government. Such persons receive no pay from the U.S. Government, receive no Government compensation if injured on the job, and are not entitled to veterans' benefits.

e. Interpretation of "Employment with the United States Government"

- (1) General Interpretation. In considering what constitutes "employment with the United States Government", the Department takes into account 5 U.S.C. 2105 and other sections of the U.S. Code and the Code of Federal Regulations that define the status of certain types of personnel. Factors are whether the person occupies an allocated position, whether the person's name appears on the payroll of a Department or agency, whether the person has a security clearance or took an oath of office, and whether the Government has the right to hire and fire the person and to control the input and the end result of the employee's work. Qualifying U.S. Government employment abroad is not determined by the type of passport which someone bears.
- (2) Nonappropriated Fund Instrumentalities. Persons who work abroad for nonappropriated fund instrumentalities (such as post exchanges, Stars and Stripes, and the Armed Forces Radio and Television Network) are U.S. Government employees for the purposes of section 301(g) INA. Pursuant to 5 U.S.C. 2105(c), they are Federal employees for all purposes except those specifically stated.
- (3) Local Hire. There is no requirement that an employee must have been sent abroad by the U.S. Government in order to have time spent abroad in Government service count as physical presence in the United States. Persons employed abroad under local hire by the U.S. Government can count such periods of employment toward the physical presence required by section 301(g) INA.
- (4) Peace Corps:
 - (a) Peace Corps volunteers are not U.S. Government employees for the purposes of section 301(g) INA. Pursuant to section 5(a) of the Peace Corps Act (22 U.S.C. 2504(a)), they are not Federal employees except for limited purposes specified in the Act.
 - (b) Peace Corps personnel, other than volunteers, who are members of

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

the Civil Service or Foreign Service can count time spent abroad on official assignments that entitled them to diplomatic or official passports.

(5) Contract Employment and Grants Not Qualifying

- (a) A person employed by a company that has accepted a U.S. Government contract to undertake a certain project abroad is not a U.S. Government employee. Such a person cannot count as U.S. physical presence any time spent abroad working on the project.
- (b) A person working at a foreign university on a grant administered by the Department of State is not a U.S. Government employee for the purposes of section 301(g) INA.

f. Interpretation of "Employment....With an International Organization as That Term Is Defined in ...22 U.S.C. 288"

- (1) Section 288, Title 22, U.S. Code states that: The term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter.
- (2) See 7 FAM 1133 Exhibit 1133.3-3 for a list of the organizations designated by Executive Orders, on the dates shown, as public international organizations pursuant to 22 U.S.C. 288. If the designation has been revoked, information about the revocation has been included. Employment abroad with any of the listed organizations while the designation was in effect may be counted as physical presence in the United States. However, some of the organizations listed may have ceased to exist (without having their demise noted) by revocation of the Executive Order designating them as international organizations. Posts should be sure to confirm the existence of the organization during the pertinent time period with the Department.
- (3) No missionary groups or commercial ventures qualify as international organizations. Service abroad by personnel of such groups cannot be counted as physical presence in the United States.

g. Interpretation of "Dependent Unmarried Son or Daughter and a Member of the Household"

- (1) General Interpretation. A citizen son or daughter of any parent whose employment abroad with the U.S. Armed Forces, the U.S. Government, or a designated international organization qualifies as physical presence in the United States may count as physical presence in the United States any time spent abroad with such parent during the parent's employment as long as the son or daughter was an unmarried, dependent member of the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

parent's household. Whether the parent was a citizen or an alien at the time of employment is immaterial.

- (2) "Dependent". The Department holds that, as used in section 301(g) INA, "dependent" means relying on one's parents for more than half of one's support. If the supporting parent dies during a foreign assignment, the status as a dependent ceases; thus foreign residence after the parent's death cannot be counted as physical presence in the United States.
- (3) "Unmarried". "Unmarried" means single, divorced, or widowed.
- (4) "Son or Daughter". "Son or daughter" includes, regardless of age, a(n):
 - (a) Legitimate son or daughter;
 - (b) Legitimated son or daughter (from the date of legitimation);
 - (c) Adopted son or daughter (from the date of adoption);
 - (d) Stepson or stepdaughter;
 - (e) Biological son or daughter of a woman engaged in employment of the type specified in section 301(g) INA; and
 - (f) Biological son or daughter of a man who has acknowledged paternity of the son or daughter.

NOTE: Use of the words "son or daughter" does not imply an age limit as the use of the term "child" (defined in section 101(c)(1) INA) might have. A person who, at any age, was the dependent, unmarried, son or daughter and a member of the household of someone abroad in qualifying military or civilian employment may count as physical presence in the United States any time during which the person maintained that status.

- (5) "Member of the Household"
 - (a) Generally, "a member of the household" of a person in qualifying employment abroad would live with that person, but in some situations the Department has considered sons or daughters living elsewhere to be members of the parents' household. These situations occur most often when the parent accepts an unaccompanied tour abroad or the child attends school in another foreign country during a parent's tour of duty abroad and is away from home for most, if not all, of the year.
 - (b) A person whose parents maintained separate foreign residences for convenience or necessity but were not estranged can count as physical presence in the United States time during which that person lived at either of those residences while the qualifying parent was employed within the scope of section 301(g) INA.
 - (c) If the parents are estranged or divorced and the parent engaged in qualifying employment has physical custody of a child, the child may count the time spent abroad during the parent's official assignment if all conditions of the proviso have been met.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (d) Periods of visitation with a noncustodial qualifying parent can be counted as time spent in the United States if, during the visit, the child is unmarried and dependent on the qualifying parent. The same considerations apply if the parent being visited is the spouse of a person engaged in qualifying employment.

7 FAM 1133.3-4 Method of Counting Physical Presence

(TL:CON-68; 04-01-1998)

- a. Only time actually spent in the United States, in its outlying possessions, the Commonwealth of the Northern Mariana Islands on or after November 3, 1986, or abroad for reasons within the scope of section 301(g) INA may be counted toward the physical presence required to transmit U.S. citizenship. For children born prior to November 14, 1986, the transmitting parent's physical presence must total 10 years, at least 5 of which were after reaching age 14. For children born on or after November 14, 1986, the transmitting parent must have 5 years' physical presence, at least 2 of which were after age 14. Illustrative examples discussed below are for the 5-year requirement. The same principles, however, apply to the 10-year requirement in effect before November 14, 1986.
- b. Usually, it is not necessary to compute U.S. physical presence down to the minute. For example, a parent who was in the United States from 1970 to 1988 has met the current transmission requirements even if the exact months, days, or hours are unknown. It would appear that a person who was in the United States from 1970 to 1986 would also be qualified to transmit citizenship to a foreign-born child; however, if the transmitting parent was born on December 31, 1970, and left the United States on January 1, 1986, that person would be missing almost 1 year of the required 2 years of physical presence after age 14.
- c. If it is not clear that the parent has more than enough physical presence in the United States, it is important to obtain the exact dates of the parent's entries and departures. Expired passports showing entries into or departures from the United States and other countries, school and employment records, tax withholding statements, and other such documents may be helpful in establishing periods of U.S. physical presence. In some cases, it is important to know the number of hours a parent spent in the United States on a particular day. For example, a U.S.-citizen resident of Mexico or Canada who commuted to the United States each day to work would be credited not with a whole day in the United States but only with the number of hours actually spent in the United States.
- d. It is possible to come to several equally valid conclusions about the amount of time between two dates. The Department favors the simplest approach and considers that a calendar year is a year whether it has 365 or 366 days and a calendar month is a month regardless of whether it has 28, 29, 30, or 31 days.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Using the period of time, September 10, 1987, to July 28, 1991, the Department considers that from September 10, 1987, to the same time in 1990 is 3 full years. From September 10, 1990, to July 10, 1991, is 10 full months. From a certain time on July 10 to the same time on July 28 is 18 days but, depending on exactly when the person left the United States, it might be slightly more or less. Unless times of entry and departure are known, the Department credits the person with 18 days for that period of time. The period of time, February 18, 1991-March 5, 1991, totals 16 days because February had 29 days in that year.

- e. The totals of 3 years, 10 months, and 18 days for the first period of time and 16 days for the second would be added to other periods of physical presence. The initial total might look something like this: 6 years, 45 months, 172 days. By dividing the number of months by 12 and the number of days by 30, one arrives at a total of 10 years, 2 months, and 22 days. If at least 2 of these years were after the parent's 14th birthday in a given case, the parent would be able to transmit U.S. citizenship to a child born abroad on or after November 14, 1986. If the total number of days is more than 365, the first step should be to divide the number by 365, because a more accurate final figure will be obtained.

7 FAM 1133.4 Children Born Out of Wedlock On or After December 24, 1952

7 FAM 1133.4-1 Section 309 INA (Old and New)

(CT:CON-421; 10-05-2012)

- a. Physical presence in the United States counts for purposes of citizenship acquisition under INA 301 or 309, regardless of whether it was pursuant to a legal admission. Congress did not specify "lawful" physical presence in INA 301 or 309, as it did in other parts of the INA. For example, in INA 320, the Child Citizenship Act of 2000, a child must have entered the United States pursuant to a lawful admission for permanent residence in order to acquire U.S. citizenship. Absent this type of statutory qualification, we cannot insist on counting only legal physical presence in the United States for purposes of being eligible to transmit citizenship under INA 301 or 309.
- b. Effect of Amendments Section 309 was substantively amended effective November 14, 1986 by the Immigration and Nationality Act Amendments of 1986, Public Law 99-653 (Nov. 14, 1986)(INAA). As originally enacted there were no specifically provided effective dates in the INAA for the 309 amendments. In 1988, however, Congress retroactively added effective dates to the INAA as if they had been included in the INAA as originally enacted. The effective dates for the amendments to section 309 were included in a new section 23(e) of the INAA. As a result of the amendments to section 309 INA,

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

and the operation of INAA 23(e), there are now three categories of persons for purposes of section 309 INA:

- (1) Persons covered by "new" 309.
- (2) Persons covered by "old" 309.
- (3) Persons who may elect to have either old or new 309 apply. "Old" 309 is defined as section 309 as in effect prior to November 14, 1986, and "new" 309 as 309 as in effect thereafter.

c. Text of "new" 309 INA (8 U.S.C. 1409):

Section 309.

"(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and of paragraph (2) of section 308, shall apply as of the date of birth to a person born out of wedlock if—

- (1) A blood relationship between the person and the father is established by clear and convincing evidence,
- (2) The father had the nationality of the United States at the time of the person's birth,
- (3) The father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) While the person is under the age of 18 years—
 - (A) The person is legitimated under the law of the person's residence or domicile, (or)
 - (B) The father acknowledges paternity of the person in writing under oath, or
 - (C) The paternity of the person is established by adjudication of a competent court.

(b) Except as otherwise provided in section 405, the provisions of section 301(g) shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."

d. Text of "old" Section 309 INA

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- "(a) The provisions of paragraphs (3), (4), (5) and (7) of section 301(a) (now paragraphs(c), (d), (e), and (g) of section 301), and of paragraph (2) of section 308, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.
- (b) Except as otherwise provided in section 405, the provisions of section 301(a)(7) (now section 301(g)) shall apply to a child born out of wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before or after the effective date of this Act and while such child is under the age of twenty-one years by legitimation.
- (c) Notwithstanding the provisions of subsection (a) of this section, a person born, on or after the effective date of this Act, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."

7 FAM 1133.4-2 Birth Out of Wedlock to American Father

(CT:CON-421; 10-05-2012)

- a. Applicable Law: Whether to Apply Old or New 309(a) INA
- (1) "New" section 309(a) INA (8 U.S.C. 1409(a)) applies to all persons born on or after November 14, 1986, its effective date, and, by virtue of section 23(e) of the INAA of 1986 (Public Law 99-653), to persons who had not attained age 18 as of November 14, 1986, except those who had previously been legitimated, to whom "old" section 309 applies. (Persons born after November 14, 1968, had not attained the age of 18 when the new 309 came into effect.)
 - (2) "Old" section 309(a) applies to persons who had attained age 18 as of November 14, 1986 and to any persons whose paternity was established by legitimation prior to that date. (Persons born on or before November 14, 1968, had attained age 18 when the new 309 came into effect.)
 - (3) Either old or new 309(a) can be applied to persons who were at least 15 but under the age of 18 on November 14, 1986. These applicants may elect to have the old section 309(a) INA apply instead of the new section 309(a) if that law is simpler for them or more beneficial to them. (Persons born after November 14, 1968 but on or before November 14, 1971 are in this category.)
- b. Establishing Citizenship Under "New" 309(a) INA. In adjudicating claims of persons to whom new section 309(a) INA applies, consular officers must adhere

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U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

to the following guidance:

- (1) **Blood Relationship:** The consular officer must be satisfied by clear and convincing evidence that a blood relationship exists between the applicant and the alleged U.S. citizen father. This evidence must produce in the fact-finder a firm belief in the truth of the facts asserted, but does not need to reach the level of certainty required for proof beyond a reasonable doubt. No blood test or any other specific type of evidence is required by the Act (see 7 FAM 1131.4 and 7 FAM 1100 Appendix A). Whether or not evidence produced by an applicant meets the "clear and convincing" standard is a question of fact which varies in each case. Consular officers should keep the above in mind when requesting and reviewing evidence.
- (2) **Evidence of the Father's Identity and Citizenship:** The evidence must show that the father was a U.S. citizen when the child was born.
- (3) **Father's Statement of Support**
 - (a) A statement of financial support is required except when the father is deceased. A father who refuses to sign a statement of support prevents his child from acquiring U.S. citizenship. A child who cannot present a written support agreement by the father cannot be documented as a U.S. citizen unless it is proven that the father is dead. This is true even if the father cannot be located; unless dead, the father must be located and comply with the requirements of section 309(a), as amended, before the child's 18th birthday.
 - (b) Since section 309(a) specifies that the father must agree in writing to support the child, a local law obliging fathers to support children born out of wedlock is not sufficient to meet the requirement of that section.
 - (c) Form DS-5507 Affidavit of Parentage, Physical Presence, and Support contains a statement of support which satisfies the requirements of new section 309(a). The statement may be in any form, however, as long as it complies with the following:
 - (i) It must include an agreement to provide financial support;
 - (ii) It must specify that such support will continue until the child's 18th birthday;
 - (iii) It must be in writing;
 - (iv) It must be signed by the father under oath or affirmation before a consular officer or before any other U.S. or foreign official authorized to register births or administer oaths; and
 - (v) It must be dated before the child's 18th birthday. It may be dated any time prior to that date, including prior to November 14, 1986.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (d) The statement of support is not required when the father is deceased. The applicant has the burden of proving the father's death, and should provide a death certificate or other acceptable evidence of the father's death.
 - (e) If the father signs a statement of support and subsequently fails to support the child, the child's U.S. citizenship is not taken away. The Department has no authority to obtain support payments from fathers or otherwise to enforce the support agreement executed pursuant to section 309(a) INA. This does not mean, however, that it could not be enforced by the child against the father, or pursuant to laws administered by other government entities.
- (4) Evidence of Legitimation or Acknowledgement of Paternity: "New" section 309(a) provides for three alternatives: legitimation under the laws of the applicant's residence or domicile; acknowledgement of paternity under oath; and court adjudication of paternity (see following paragraphs). Any of the three actions is sufficient, as long as the action occurs while the applicant is under the age of 18.
- (a) Legitimation
 - (i) "New" section 309(a) provides for legitimation by the father as an alternative means of establishing legal relationship. (Under "old" 309, it is/was the only method authorized). If the applicant was legitimated while under the age of eighteen, by affirmative act or by operation of law under the child's residence or domicile on or after November 14, 1986, he or she need only submit the statement of support discussed in 7 FAM 1133.4-2 b(3), unless such a statement was part of the legitimating act and evidence to that effect is submitted.
 - (ii) Legitimation is the giving, to a child born out of wedlock, the legal status of a child born in wedlock, who traditionally has been called a "legitimate" child. Thus, legitimacy is a legal status in which the rights and obligations of a child born out of wedlock are identical to those of a child born in wedlock. This status is generally relevant primarily to the rights of the child vis-a-vis its natural father. Many foreign countries may not use the term "illegitimate", but nonetheless recognize that a child born in wedlock has greater rights than a child born out of wedlock, for instance under local inheritance laws. The out of wedlock child in such countries is not legitimated within the meaning of new section 309(a).
 - (iii) "New" section 309(a) requires that legitimation occur under the laws of the residence or domicile of the child, not the father. (As discussed in the following sections, under old 309, it may be the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

laws of the residence or domicile of either the father or the child.)

- (iv) Posts in countries where legitimation laws are unclear, unknown, or non-existent should obtain the father's statement of support and acknowledgement rather than expend resources in attempting to determine whether legitimation occurred. If a legal interpretation of a legitimation law is needed, posts should request the Department's (CA/OCS) assistance.
 - (v) Legitimation is best used to establish relationship only in cases where the legitimating act has already taken place and evidence is readily available. Do not inconvenience applicants by requiring them to submit extensive evidence of legitimation or expend resources to research or interpret foreign legitimation laws. Encourage the use of the simpler alternative of acknowledgement of paternity discussed in 7 FAM 1133.4-2 b(4).
 - (vi) Posts must be satisfied in cases of previous legitimation that the child was resident or domiciled in the country where the legitimating act occurred. In most cases, a child's residence is the same as its domicile, and both usually coincide with those of the parents. Posts should question the applicant and parents regarding residence and domicile in the same manner as for legitimation under the original version of section 309(a) discussed in 7 FAM 1133.4-2 c.
 - (vii) Legitimation may occur by automatic operation of law at birth, by some affirmative act of the father (for instance, marrying the mother), or by court order. Although the legitimation status goes back to birth, it is the date of the legitimating act which must be considered in a citizenship claim.
- (b) Acknowledgement of Paternity
- (i) Acknowledgement of paternity is the simplest means of establishing legal relationship under the new 309(a) and should be used in most cases. It may have occurred either before or after November 14, 1986, as long as it was done while the child was under age 18.
 - (ii) Acknowledgement may be made under oath or affirmation in any form before a consular officer or other official authorized to administer oaths. An acknowledgement made by the father on the child's birth certificate or otherwise under foreign procedures is acceptable if it was under oath or affirmation.
 - (iii) Fathers of applicants not already legitimated, acknowledged, or subject to court decrees of paternity may execute an

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

acknowledgement and the statement of support in the same instrument for the sake of simplicity, provided the applicant is under 18 at the time the joint document is signed. Form DS-5507 may be used for this purpose.

(c) Court Adjudication of Paternity

- (i) Establishment of legal relationship by the alternative of court adjudication of paternity will be extremely rare. It need not be pursued unless the father is unable or unwilling to acknowledge the child.
- (ii) Such adjudication must have occurred before the child reached age 18. It is irrelevant whether it was before or after November 14, 1986.
- (iii) Fathers of applicants who are already the subject of such adjudications need only submit the statement of support (unless it was previously presented in the court proceeding and evidence to that effect is submitted). Consular officers should presume that the court had jurisdiction over the case. Consuls should keep in mind that court paternity decrees only establish a legal relationship, not a blood relationship. Individuals presenting paternity decrees must still present evidence of a blood relationship as required by Section 309(a). If there is evidence which draws into question a court's findings, the post should not accept the court order as establishing a legal relationship (paternity) between the father and child without consulting the Department (CA/OCS).

- (5) Father's physical presence in the United States: If the applicant was born prior to November 14, 1986, the U.S. citizen father is subject to the original requirements of section 301(g) INA to transmit citizenship to the applicant. Thus, he must show that he was physically present in the United States for 10 years, at least 5 of which were after reaching the age of 14, prior to the birth of the applicant. For applicants born on or after November 14, 1986, the most recent physical presence requirements of section 301(g) apply. In this instance, the U.S. citizen father must show that, prior to the birth of the applicant, he was physically present in the United States for 5 years, at least two of which were after reaching the age of 14.

c. Establishing Citizenship Under "Old" Section 309(a) INA: When adjudicating cases under old section 309(a) INA, consular officers must adhere to the following guidance:

- (1) Blood Relationship: The consular officer must be satisfied that a blood relationship exists between the child and the U.S. citizen father. Absent such a relationship, the child of an alien mother cannot acquire U.S.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

nationality at birth (see 7 FAM 1131.4).

(2) Legitimation: Law of Residence and Domicile

- (a) Under Old 309(a), the place for legitimation was not specified. Old 309(a) was applied to permit legitimation to take place pursuant to laws of the U.S. or foreign residence or domicile of the father or child (see 7 FAM 1133 Exhibit 1133.4-2(A) for various State legitimation laws). The consular officer should learn which foreign countries or States of the United States qualify as either the father's residence or domicile or the child's residence or domicile for purposes of establishing legitimation.
- (b) The Immigration and Nationality Act defines "residence" as the place of general abode of a person; his principal, actual dwelling place in fact, without regard to intent. Under this definition, a military base where a person is stationed, even for a short period of time such as a training assignment at an appropriate place, can be considered a residence and the laws of the state or country where the base is located can be considered for legitimation purposes.
- (c) "Domicile" is generally defined as the place of a person's true, fixed, and permanent home or ties, and to which whenever absent, the person intends to return.
- (d) In attempting to determine residence or domicile, the consular officer may ask such questions as: Where did you own property? Where did you pay taxes? Where were you registered to vote? Where have you had bank accounts? What State issued you a driver's license or other license? What ties do you have to the place of residence or domicile?

(3) Legitimation: Marriages: The consular officer should ask whether the child's father and mother have ever been married to each other. A valid intermarriage of a child's natural parents subsequent to a child's birth serves to legitimate a child in most jurisdictions. The validity of a marriage is governed by the law of the place where it was performed and may be a determining issue in a child's claim to citizenship under section 309(a). A marriage that is void or voidable may also serve to legitimate a child in some circumstances, particularly if the child was born after the marriage.

- (a) Valid marriages: See 7 FAM 1133 Exhibit 1133.4-2(A) for a list of the states in which a subsequent marriage of the parents will serve to legitimate a child. If the laws of the state or the country where the father or the child resided or were domiciled provide for legitimation by subsequent marriage, those laws may be applied if there was a valid marriage of the parents while the child was under 21. In general, the place of marriage and the place of residence or domicile must be the same. There are exceptions to this general rule, however, and a post may find it necessary to submit questions of this nature to

UNCLASSIFIED (U)

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U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

the Department (CA/OCS).

(b) Voidable and Void Marriages

- (i) A marriage that did not conform to the laws of the country or state in which it was performed may be a void marriage, but only after declared so by an appropriate authority, usually a court in the jurisdiction where the marriage occurred. Prior to such judicial declaration, the marriage may be considered voidable. A voidable marriage is considered valid for all purposes unless and until annulled or voided by the court. Even after a marriage is voided, there is every likelihood that the children's status will not be affected. Every state in the United States, for example, considers children of a void marriage to be legitimate (see 7 FAM 1133 Exhibit 1133.4-2(A), Part II).
- (ii) Posts should have available a copy of the consular district's local laws on marriage and legitimation. If for any reason a marriage does not appear to have been valid and legitimation is a determining factor in the citizenship claim, consular officers may need to consult local law, if a U.S. domicile cannot be identified, to determine if children born of a void marriage are considered legitimate. If they would not be considered legitimate, the consular officer must determine that the marriage was, in fact, declared void by an appropriate authority before denying the claim. A post that is considering a case involving legitimation in a third country may seek information on the laws of that country from the embassy of that country or from the U.S. embassy in that country.
- (iii) A law that declares legitimate a child born during a void marriage presumes that the marriage ceremony took place before the child's birth unless the law specifically mentions children born before the marriage. Cases that involve void marriages that occurred after a child's birth should be referred to the Department (CA/OCS).

(c) Absence of a Marriage

- (i) If no marriage has occurred between the child's U.S. citizen father and the child's natural mother, the consular officer, after determining the appropriate domicile or residence, should consult the applicable U.S. or foreign laws to learn whether the child was legitimated by other means. In most countries or States where legitimation is possible without subsequent intermarriage of the biological parents, certain conditions must be met (such as formal acknowledgment of the child by the father, acceptance into the father's household, consent of the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

father's wife). For a summary of U.S. laws on legitimation without marriage, see 7 FAM 1133 Exhibit 1133.4-2(A), Part III.

- (ii) Some states and countries grant all children equal rights, regardless of the parent's marital status. In such cases, the child may be considered to have established paternity by legitimation under old 309(a) if the blood relationship between the father and child was established before the child's 21st birthday, and the law concerning the equality of all children was in effect before the child's 21st birthday.
 - (iii) Some states and countries do not provide any specific way for fathers to legitimate their children. Persons born out of wedlock who had to rely on the legitimation laws of those places could not acquire U.S. citizenship through their fathers if they were age 18 prior to the 1986 amendment of section 309(a) INA.
- (4) Legitimation: Adoption by Biological Father
- (a) If a father adopts his biological child while the child is under age 21, the Department regards the child as legitimated for purposes of old 309(a) regardless of the law of the father or child's residence or domicile.
 - (b) Before any documents are issued, cases that involve adoption by the biological parent should be referred to the Department (CA/OCS) by telegram or memorandum requesting advisory opinion.
- (5) Father's Physical Presence in the United States: An applicant acquiring citizenship under the old 309(a) must show that his or her father was physically present in the United States for 10 years, at least 5 of which were after the age of 14, prior to the birth of the applicant.

7 FAM 1133.4-3 Birth Out of Wedlock to American Mother

(TL:CON-68; 04-01-1998)

- a. Claims Under Section 309(c) INA: A child born abroad out of wedlock on or after December 24, 1952, to a U.S. citizen mother acquires U.S. citizenship if the mother was physically present continuously for 1 year in the United States or its outlying possessions at any time prior to the child's birth. This did not change under any of the amendments to Section 309 INA. Thus a woman who had spent only a very short time every year outside the United States would be unable to transmit citizenship under section 309(c) INA even though she might have qualified to transmit U.S. citizenship under section 301(g) INA if she had been married to the father of the child. The 1966 amendment to section 301 INA allowing members of the U.S. armed forces, employees of the U.S. Government and certain international organizations, and their dependents to count certain periods outside the United States as U.S. physical presence does not apply to section 309(c) INA. For this reason, the mother of a child born out

UNCLASSIFIED (U)

of wedlock cannot use time spent abroad as a military dependent, for example, to satisfy all or part of the requirement of continuous physical presence in the United States for 1 year. Subsequent legitimation or the establishment of a legal relationship between an alien father and a person who acquired U.S. citizenship at birth under section 309(c) does not alter that person's citizenship.

- b. Claims under Old 309(a): Prior to the November 14, 1986, amendments to section 309(a), section 309(a) did not apply exclusively to the out of wedlock children of U.S. citizen fathers, but could also be applied to the out of wedlock children of U.S. citizen mothers. As a result, a person born out of wedlock to a U.S. citizen mother who could not transmit citizenship under section 309(c) because she had not been physically present in the United States or outlying possessions for the continuous 1-year period may claim citizenship under old 309(a). As discussed previously, under old 309(a) the child's paternity must have been established by legitimation before the child's 21st birthday. If this condition is met, old 309(a) permits acquisition through section 301(g) (formerly 301(a)(7)), which requires that the citizen parent (mother or father), before the child's birth, have amassed the 10 years of U.S. physical presence, including 5 after age 14. Persons born out of wedlock to alien fathers and U.S. citizen mothers on or after November 14, 1986 cannot claim citizenship under 309(a) because new 309(a) requires that the father have been a U.S. citizen at the time of the child's birth.
- c. Retention requirements: The retention requirements of former section 301(b) INA did not apply to children who acquired U.S. citizenship under section 309(c) INA by birth out of wedlock to American mothers.

7 FAM 1133.5 Guidance for Determining Acquisition of U.S. Citizenship by Children Born Abroad to Two U.S. Citizen Parents Under INA 301(c)

(CT:CON-522; 07-08-2014)

- a. The concept of residence is inherently more complex than the more literal concept of physical presence. While no specific period of residence is mentioned in the statute, Congress' use of the term "residence" requires a close examination, on a case by case basis, of the facts related to one's stay in the United States to determine if it falls within the INA's definition of "residence."
- b. Residence is not determined solely by the length of time one spends in a place, but also takes into account the nature and quality of the person's connection to the place. This is a very fact-specific test. However, at all times and in all cases, residence involves the connection to a specific physical place. Residence is not a state of mind that travels with a person. Department guidance clearly states that residence is more than a temporary presence and that visits to the United States are insufficient to establish residency for the purposes of

UNCLASSIFIED (U)

citizenship transmission under INA 301(c). See 7 FAM 1134.3-2.

- c. Section 101(a)(33) of the INA defines residence as the person's "place of general abode [meaning] his principal actual dwelling place in fact, without regard to intent." Under this definition, residence is much more than an address -- e.g., a Post Office box is not a place of general abode or a dwelling place -- it is one's principal actual dwelling place. A person has a different relationship to his or her residence than to any other place. For example, someone who rents a vacation home in California for a month in the summer has not established a "principal actual dwelling place," as that term is used in Section 101(a)(33). Similarly, someone who resides along the border in Mexico or Canada, but works each day in the United States cannot use his or her workplace to establish a residence. In both examples, however, the person could establish physical presence. Some examples of what constitutes a "residence" versus "physical presence" are described below.
- d. Owning or renting property in the United States is not a pre-condition for proving a residence. Similarly, owning or renting property outside of the United States is not necessarily incompatible with having a residence in the United States. Where a person owns or rents property is certainly relevant information that could help a consular officer make a determination of whether a person has or has not had a residence in a particular place, but other evidence is important as well -- e.g., evidence that shows that the person actually lived in that property and conducted normal daily activities of life there. In other words, evidence that shows it is one's principal actual dwelling place.
- e. Birth in the United States is usually sufficient to satisfy the residence requirement of Section 301(c) of the INA. For example, where a person is born abroad in wedlock to two U.S. citizen parents, and one parent was born in the United States, that U.S. citizen parent will meet the "residence" requirement as long as evidence is presented that demonstrates that the parent's mother was not merely transiting through the United States at the time of that parent's birth. We note that a long form birth certificate usually includes the mother's address, which normally suffices to show that the mother was not transiting through the United States.
- f. While the definition of residence is not dependent on a specific time period in the United States, the longer the duration of a person's stay in a particular place in the United States (e.g., six months or more), the more likely it is that that place can be characterized as the person's residence. On the other hand, if the stay at a place in the United States was relatively brief (e.g., a few months or less), then in order for that place to be considered a "residence" additional evidence may be required to show why the stay, though brief, was other than a temporary visit.
- g. The concept of "residence" should not be confused with the term "physical presence" which is used elsewhere in the INA as the test for transmitting citizenship, and which is a more literal concept that may be easier to apply.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Section 301(g), for example, requires that when only one parent is a U.S. citizen, that citizen parent must have a specific duration of physical presence -- not residence -- in the United States prior to the birth of the child in order to transmit U.S. citizenship to the child. Unlike in Section 301(g), in Section 301(c), Congress chose to use the term "residence," and not set a time requirement. The rationale being that the nature of a residence presupposes the sort of relationship to a place that mere physical presence does not.

- h. One important distinction between "physical presence" and a "residence" is the way that we consider the time spent in the United States in evaluating whether the terms are met. The time spent in a "residence" is time spent in that one particular place, not time spent in the United States overall. On the other hand, when computing "physical presence," we consider any time a person has spent anywhere in the United States to count towards "physical presence." Thus, if a person spent a year travelling around the United States on a cross-country tour, and slept in a different hotel every week for a year, we would find that he was physically present in the United States for a year, but we could not find that he had a residence in the United States unless there was other evidence that supported the conclusion that one of the places where the person spent time was that person's "principal actual dwelling place." The United States is not a person's dwelling place.
- i. Examples of documents that can help demonstrate a residence include, but are not limited to, a combination of some of the following: property rental leases and payment receipts, deeds, utility bills, property tax records, automobile registrations, professional licenses, employment records or information, income tax records, stamped school transcripts, military records, income records, including W-2 salary forms, and vaccination and medical records.
- j. In general, the parent whose residence is being used to transmit citizenship to the child must be personally present at the U.S. Embassy or Consulate with his or her documentation for an interview by a consular officer.

EXAMPLES

Person A lives in Israel and traveled to the United States for six weeks during his summer vacation in 2000. He stayed at his cousin's house in New York for two weeks to attend a family wedding, then he went to his parent's house for two weeks to celebrate their anniversary, and then he went to Florida for two weeks to go to Disneyworld. This person does not have a residence in the United States, but he has accumulated six weeks of physical presence in the United States.

Person B lives in France. Person B was a high school exchange student who lived with the Peterson family in Michigan from August 30, 1989 to January 3, 1990. During that time, the Peterson family moved from a house on Elm Drive to one in a nicer neighborhood on Pine Street. Person B attended East Michigan High School for the entire fall semester. Person B did have a "residence" for purposes of INA 301(c) because each of the Peterson's houses was her principal actual dwelling place at the time. She

also accumulated over four months of physical presence in the United States.

Person C lives in Mexico, but has a job as a doctor at a hospital in Texas. He owns a house with his *spouse* in Mexico and his three children go to school in Mexico. When Person C is on call, he will spend the night at his cousin's house in Texas. Averaged over a year, Person C spent seven months in the United States -- either at work, at his cousin's house, or visiting friends and work colleagues. Person C does not have a residence in the United States, but he has accumulated seven months of physical presence in the United States.

Person D was born and raised in Israel. He acquired U.S. citizenship at birth because he was born in wedlock to married U.S. citizens and his mother had a residence in the United States before his birth. Person D, who is now 30 years old, has lived in Israel all of his life. However, from the time that Person D was eight years old until he graduated from high school, Person D spent his summers at a sleepover camp in upstate New York. He would usually arrive in June and would return to Israel in August. While he occasionally visited other relatives on weekends, the camp was his principal actual dwelling place for the summers. He slept, ate his meals, and received mail at the camp. Person D had a residence in the United States. In addition, he could add up the time he had spent in the United States during those summers, plus any other trips he had taken subsequently, and apply it towards his physical presence in the United States.

7 FAM 1133.6 Evidence of Claim to U.S. Citizenship Under Sections 301 and 309 INA

(CT:CON-367; 04-08-2011)

- a. The evidence to establish citizenship claims is described briefly in 22 CFR 50.2-50.5 and in more detail in 22 CFR 51.42 and 22 CFR 51.43. 22 CFR 51.45 specifies that an applicant may be required "to submit other evidence deemed necessary to establish his or her U.S. citizenship or nationality."
- b. Evidence in support of a claim to U.S. citizenship through birth abroad to one or both U.S. citizen parents under the provisions of sections 301 and/or 309 INA includes but is not limited to:
 - (1) A birth certificate or other proof of the child's birth to a U.S. citizen mother, father, or both;
 - (2) The parents' marriage certificate, if the child was born in wedlock or if the child claims legitimation through the marriage of the parent;
 - (3) Form DS-5507 or other evidence of the child's legitimacy or legitimation, if the child was born out of wedlock (unless the claim is through the mother under section 309(c));

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (4) Evidence that at least one parent was a U.S. citizen at the time of the child's birth; and
 - (5) Evidence of that parent's physical presence in the United States, in qualifying employment abroad, or as the dependent unmarried son or daughter and a member of the household of a person so employed, prior to the child's birth for the length of time required by the section of law under which the child is claiming U.S. citizenship.
- c. Those persons born before October 10, 1952, who acquired U.S. citizenship pursuant to section 301(a)(7), as made applicable by the Act of March 16, 1956, must also prove that they complied with or were exempted from the applicable retention requirements (see 7 FAM 1100 Appendix L).
 - d. Adults wishing to have their citizenship status adjudicated should complete Form DS-11 and Form DS-4079, Questionnaire Information for Determining Possible Loss of U.S. Citizenship. Citizenship claims of a person under the age of 18 may be adjudicated on the basis of a passport/registration application signed, as appropriate, by the applicant, a parent, legal guardian, or person acting in loco parentis or on the basis of an application for a Report of Birth completed by a parent or legal guardian.

7 FAM 1134 NATIONALITY ACT (NA) OF 1940

7 FAM 1134.1 Effective Date

(TL:CON-68; 04-01-1998)

The Nationality Act of 1940 (54 Stat. 1137) went into effect on January 13, 1941. It also:

- a. Repealed Section 1993, Revised Statutes; and,
- b. Was in most, but not all, respects superseded by the Immigration and Nationality Act of 1952 (INA), effective December 24, 1952, at 12:01 a.m., Eastern Standard Time.

7 FAM 1134.2 Text of Section 201 NA

(TL:CON-68; 04-01-1998)

Selected portions of section 201 NA, which is not readily available for reference at many posts, are provided here:

The following shall be nationals and citizens of the United States at birth:...

- (c) A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person;

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- (d) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;...
- (g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: Provided, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease. The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation;
- (h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934;
- (i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has served or shall serve honorably in the Armed Forces of the United States after December 7, 1941, and before the date of the termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five years of which were after attaining the age of twelve years, the other being an alien: Provided, that in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up residence in the United States or its outlying possessions by the time he reaches the age of

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UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease. (Added by the Act of July 31, 1946.)

NOTE: By Proclamation No. 2714 of December 31, 1946, the President publicly announced the cessation of hostilities effective 12 o'clock noon, December 31, 1946 (see section 201(i) NA).

7 FAM 1134.3 Residence Requirement for Transmitting U.S. Citizenship (January 13, 1941, through December 23, 1952)

7 FAM 1134.3-1 Basic Elements

(TL:CON-68; 04-01-1998)

- a. The Nationality Act's requirements for acquiring U.S. citizenship by birth abroad differed from those of Section 1993, Revised Statutes (R.S.). To transmit citizenship to foreign-born children, the NA required a U.S. citizen married to an alien to have had a much longer residence in the United States or its outlying possessions than one married to a U.S. citizen or national.
- b. "United States" and "outlying possessions" were defined as the continental United States, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and all other territory, except the Canal Zone, over which the United States exercised sovereignty (section 101 NA).
- c. If both parents were U.S. citizens or if one was a citizen and the other a U.S. national (defined by section 101(b) NA in this context as a person, not a U.S. citizen or an alien, who owes permanent allegiance to the United States), the length of residence required to transmit citizenship was not specified, and any period of presence accompanied by the maintenance of a place of general abode in the United States or its outlying possessions would satisfy the requirement. Section 201(g) NA specified, however, that if one parent was an alien, the citizen parent must have resided in the United States or one of its outlying possessions before the child's birth for a total of 10 years, including 5 years after the citizen parent's 16th birthday, in order to transmit citizenship.
- d. This lengthy residence was a way to ensure that there would not be successive generations of Americans residing abroad with no ties to the United States. It also meant that citizens under age 21 and married to aliens could not transmit citizenship under section 201(g) NA even if the citizen parents had resided in the United States since birth. The Department has no authority to waive any part of the required residence.

7 FAM 1134.3-2 What Constituted Residence in United States Under Section 201 NA

(TL:CON-68; 04-01-1998)

- a. Section 104 of the Nationality Act stated that, for the purposes of Section 201, "the place of general abode shall be deemed the place of residence." Thus, it required more than the temporary presence that was sufficient under earlier laws. Visits to the United States by citizen parents prior to the birth of the child were insufficient to confer citizenship under section 201(c). Persons who commuted daily to work or school in the United States from Canada and Mexico could not include the time which they spent in the United States each day as residence in the United States.
- b. A technical domicile did not satisfy the residence requirement in the absence of the necessary principal dwelling place. For this reason, citizens who, as minors, lived abroad while their parents resided in the United States could not be considered as having resided in the United States during the period of their parents' residence although, generally, the parents' residence would have been considered to be the children's residence also.
- c. Citizens who had been left in the United States when their parents took up residence abroad or who came to live in the United States while attending school or college and while their parents remained abroad would be able to count each period of time spent in the United States toward the satisfaction of the residence requirement for transmission of citizenship.
- d. In a 1948 opinion, the Legal Advisor of the Department of State held that section 201 NA did not require the parents to remain continuously and uninterruptedly in the United States during the prescribed period, but required the parents to maintain their place of abode in the United States during any absences. Residence was not terminated by visits abroad but was terminated by the establishment of a dwelling place abroad. Absence from the United States as a member of the U.S. Armed Forces was counted as residence in the United States, provided the service was honorably performed. Absences from the United States due to employment or schooling abroad could also be included as residence in the United States as long as the persons involved maintained their place of general abode in the United States.

7 FAM 1134.4 Special Provisions for Children of Veterans

(CT:CON-349; 12-13-2010)

- a. Section 201(g) NA precluded transmission of citizenship by persons under age 21. Because persons under that age who had served in the U.S. Armed Forces during World War II and were married to aliens found themselves unable to transmit citizenship to their foreign-born children, the Nationality Act of 1940

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

was amended to include section 201(i). This permitted citizens who had served honorably in the U.S. Armed Forces after December 7, 1941, and before December 31, 1946, to transmit citizenship to their foreign-born children if, prior to the child's birth, the citizen parent had resided in the United States for 10 years, 5 of which were after the citizen parent's 12th birthday. Thus, section 201(i) NA reduced to age 17 the minimum age at which a citizen parent who served in the U.S. Armed Forces during the statutorily prescribed period could transmit citizenship.

- b. As noted in 7 FAM 1134.3-2 d, honorable U.S. military service counted as residence in the United States. A child of a U.S. citizen whose U.S. military service was dishonorable could not benefit from section 201(i) NA.
- c. A child born between January 13, 1941 and December 23, 1952, inclusive, whose U.S. citizen parent met the transmission requirements of section 201(i) NA was considered to have acquired U.S. citizenship at birth, whether the parent's military service was before or after the child's birth.
- d. Originally, it was held that section 205 NA applied to cases of children who were born out of wedlock and claimed citizenship under section 201(i) NA. However, in *Y.T. v. Bell*, 478 F. Supp. 828 (W.D. Pa 1979), the court ruled that section 201(i) NA does not require the child to be legitimated in accordance with section 205 NA in order to acquire U.S. citizenship. It was sufficient that the child was the blood issue of the serviceman (established in *Y.T.* by an affidavit of paternity) and later complied with applicable retention requirements. The court reached its conclusion on two grounds:
 - (1) Section 205 NA does not specifically refer to Section 201(i); and
 - (2) Equal protection.
- e. The use of section 201(i) NA should be considered only if it was not possible to acquire citizenship under section 201(g) NA. All children who became U.S. citizens under section 201(i) NA were subject to that section's requirements for retaining U.S. citizenship, but, because in 1952 none of them were old enough to begin to comply with section 201(i)'s retention requirements, they all became subject to those of Section 301(b) INA (see 7 FAM 1100 Appendix L).
- f. Under the Act of March 16, 1956 (70 Stat. 50), the child of a citizen who did not have enough U.S. residence to transmit citizenship under section 201 (g) or (i) NA but who had served honorably in the U.S. Armed Forces between December 31, 1946 and December 24, 1952, and who, before the child's birth, had met the physical presence requirement of section 301(a)(7) INA, as originally enacted, acquired U.S. citizenship under section 301(a)(7) INA and was subject to the retention requirements of section 301(b) INA, as originally enacted.

7 FAM 1134.5 Children Born Out of Wedlock (January 13, 1941, through December 23, 1952)

7 FAM 1134.5-1 Text of Section 205 NA

(TL:CON-68; 04-01-1998)

Unlike older nationality laws, the Nationality Act of 1940 specified how children born out of wedlock to U.S. citizens could acquire U.S. citizenship. Section 205 NA stated that:

The provisions of section 201, subsections (c), (d), (e), and (g), and section 204, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status. (8 U.S.C. 605; 54 Stat. 1139-1140.)

7 FAM 1134.5-2 Birth to American Father, With Paternity Established Before December 24, 1952

(CT:CON-349; 12-13-2010)

- a. For a person to have acquired U.S. citizenship at birth abroad out of wedlock to an alien mother and a U.S. citizen father:
 - (1) The father must have met the qualifications for transmitting U.S. citizenship; and
 - (2) The person's paternity must have been established while under the age of 21 by legitimation under an applicable U.S. or foreign law or by the adjudication of a court of competent jurisdiction.
- b. Under section 205 NA, a child could acquire U.S. citizenship without legitimation by the U.S. citizen father if, during the child's minority, a court of competent jurisdiction ruled that the father was the parent of the child.
- c. Section 205 NA was not revised when section 201 NA was amended by adding subsection (i). In *Y.T. v. Bell*, 478 F. Supp. 828 (W.D. Pa 1979), the court held that section 205 did not apply to subsection 201(i). Therefore, legitimation or adjudication by a competent court was not necessary for acquisition of U.S. citizenship under section 201(i) NA (see 7 FAM 1134.2 and 7 FAM 1134.4 d).

7 FAM 1134.5-3 Birth to American Father From 1941 to 1952 With Paternity Established on December 24, 1952

(CT:CON-349; 12-13-2010)

- a. Section 309(b) of the Immigration and Nationality Act (INA) (8 U.S.C. 1409(b)) states that: Except as otherwise provided in section 405, the provisions of section 301(a)(7) shall apply to a child born out of wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before or after the effective date of this Act while such child is under the age of twenty-one years by legitimation.

NOTE: On December 29, 1981, Public Law 97-116 (95 Stat. 1620; 8 U.S.C. 1409) changed "301(a)(7)" to "301(g)."

- b. The Department has found this section of law somewhat ambiguous. The law clearly provided the possibility for children born after January 13, 1941, and legitimated before December 24, 1952, who did not acquire citizenship under section 201 NA, to acquire U.S. citizenship under section 301(a)(7) INA. However, it is not clear whether it was intended to be the sole way a person born out of wedlock after January 13, 1941, and legitimated on or after December 24, 1952, could acquire U.S. citizenship. If so, it runs counter to the time-honored principle that legitimation is retroactive to the date of birth and confers the full status and rights of a legitimate child (32 Op. Atty. Gen. 162), and that acquisition of U.S. citizenship depends on the law in force at the time of the applicant's birth.
- c. Despite this, the Department originally interpreted section 309(b) INA strictly and applied it to all cases that involved legitimation after December 24, 1952, of children born during the life of the Nationality Act. Later, departures from this strict standard occurred in individual cases, mainly because of the inequities possible when section 309(b) INA is construed narrowly and not as the remedial law it apparently was intended to be.
- d. In view of the retroactive effect of legitimation, the Department holds that persons born during the life of the Nationality Act, but legitimated after its repeal, can be considered to have acquired U.S. citizenship under section 201 (c), (d), or (g) NA, as made applicable by section 205 NA, if their fathers met the requirements for transmitting U.S. citizenship. As noted in 7 FAM 1134.4 d and 7 FAM 1134.5-2 c, section 205 NA was not applicable to section 201(i) NA. Persons whose legitimation before age 21 did not enable them to claim citizenship under section 201 could acquire citizenship under section 301(a)(7) INA, as made applicable by section 309(a) INA, if their fathers were capable of transmitting citizenship under that section. For persons born out of wedlock to American fathers during the life of the Nationality Act but legitimated after its repeal, the section of law most beneficial to the applicant should be applied.

7 FAM 1134.5-4 Birth Out of Wedlock to American Mother

(TL:CON-68; 04-01-1998)

- a. Under the second paragraph of section 205 NA, persons born out of wedlock to U.S. citizen mothers on or after January 13, 1941, acquired U.S. citizenship at birth if their mothers previously had resided in the United States (see 7 FAM 1134.5-1).
- b. Paragraph two of section 205 NA also was retroactive, but the Department held that it did not apply to a child born abroad out of wedlock to a U.S. citizen mother if the child had been legitimated before the Nationality Act became effective.
- c. The citizenship status of persons who acquired U.S. citizenship at birth abroad out of wedlock to a U.S. citizen mother was not affected by legitimation after January 13, 1941, and no retention requirement applied.

7 FAM 1134.6 Unassigned

(CT:CON-349; 12-13-2010)

7 FAM 1134.7 Proof of Claim to U.S. Citizenship Under Sections 201 (c), (d), (g), and (i) and 205 NA

(CT:CON-367; 04-08-2011)

- a. The evidence to establish citizenship claims is described briefly in 22 CFR 50.2-50.5 and in more detail in 22 CFR 51.42 and 22 CFR 51.43. 22 CFR 51.45 specifies that an applicant may be required "to submit other evidence deemed necessary to establish his or her U.S. citizenship or nationality."
- b. Evidence in support of a claim to U.S. citizenship through birth abroad to one or both U.S. citizen parents under the provisions of sections 201 and/or 205 NA includes, but is not limited to:
 - (1) A birth certificate or other proof of the child's birth to a U.S. citizen mother, father, or both;
 - (2) If applicable, the parents' marriage certificate or other proof of the child's legitimacy or legitimation;
 - (3) Proof of at least one parent's U.S. citizenship; and
 - (4) Evidence of that parent's residence in the United States before the child's birth for the length of time required by the section of law under which the child is claiming U.S. citizenship.
- c. Persons who acquired U.S. citizenship under section 201 (g) or (i) NA must also prove that they have complied with or have been exempted from applicable retention requirements (see 7 FAM 1100 Appendix L).

7 FAM 1135 SECTION 1993, REVISED STATUTES OF 1878

7 FAM 1135.1 Text as Originally Enacted

(CT:CON-349; 12-13-2010)

- a. As originally enacted, Section 1993 provided for transmission of citizenship only through fathers. It stated: All children heretofore or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.
- b. Congress rectified the inequity in this law through the enactment of section 301(h) INA (8 U.S.C. 1401(h)) which specifically provides for acquisition of U.S. citizenship by children born abroad prior to 1934 to U.S. citizen mothers who had previously resided in the United States (see 7 FAM 1132.9 and 7 FAM 1133.2-1).

7 FAM 1135.2 Residence Requirement for Transmitting U.S. Citizenship Before January 13, 1941

7 FAM 1135.2-1 Purpose

(TL:CON-51; 2-15-91)

- a. The aim of the residence requirements of Section 1993, R.S., and of earlier laws was to prevent the residence abroad of successive generations of persons claiming the privileges of U.S. citizenship while evading its duties.
- b. No citizenship law before the Nationality Act of 1940 explained what was meant by "resided in the United States" or when the parent's residence in the United States must have occurred.

7 FAM 1135.2-2 Residence May be of Short Duration But Must Have Preceded Birth

(TL:CON-68; 04-01-1998)

- a. The Department held that the U.S. residence had to precede the child's birth.
- b. This position was confirmed by the Supreme Court in 1927 in *Weedin v. Chin Bow*, 274 U.S. 657 (see excerpts in 7 FAM 1170).
- c. Any temporary residence or physical presence before the child's birth, save a mere transit presence of a few hours, satisfied the residence requirement of Section 1993, R.S., and earlier laws.

7 FAM 1135.2-3 Territories Considered Part of United States for Purposes of Section 1993 R.S.

(TL:CON-68; 04-01-1998)

- a. The early citizenship laws did not define "United States." However:
 - (1) It was clear that States admitted to the Union were included; and
 - (2) The incorporated territories of the western continental United States, Alaska, and Hawaii, to which the Constitution had been made fully applicable, were also considered to be part of the United States from the time when they were incorporated.
- b. The status of persons born in Hawaii prior to its incorporation by the Hawaii Organic Act (31 Stat. 141) was addressed in Section 100 of that Act, 31 Stat 161, which stated: That for the purposes of naturalization under the laws of the United States residence in the Hawaiian Islands prior to the taking effect of this Act shall be deemed equivalent to residence in the United States. ...
- c. Statutes confirming citizenship by birth abroad are enacted pursuant to the power of Congress "to establish an uniform rule of naturalization," and are considered to be "naturalization laws" e.g., *U.S. v. Wong Kim Ark*, 169 U.S. 649, 672, 702-704 (1898). The reference to naturalization laws in the Hawaii Organic Act just quoted is considered to encompass such statutes including sections 301 and 309 of the INA. Therefore, residence in the Hawaiian Islands before their annexation on August 12, 1898, counts as residence in the United States for the purpose of transmitting U.S. citizenship. e.g., *Wong Kam Wo et al v. Dulles*, 236 F.2d 622 (1956).
- d. There are no similar statutory provisions regarding residence in other unincorporated territories. The Department generally held that residence in unincorporated territories and possessions other than Hawaii could not be counted as residence in the United States for purposes of Section 1993 R.S. However:
 - (1) In individual cases, residence in Puerto Rico after April 10, 1899, was held to be sufficient for transmitting U.S. citizenship; and
 - (2) The Immigration and Naturalization Service has held that residence in the U.S. Virgin Islands after January 16, 1917, could be counted as residence in the United States.

7 FAM 1135.3 Children Born Out of Wedlock Before Noon EST May 24, 1934

7 FAM 1135.3-1 To American Father

(TL:CON-68; 04-01-1998)

- a. Until the Nationality Act of 1940 took effect in 1941, no U.S. law addressed specifically how U.S. children born abroad out of wedlock to U.S. citizens could acquire U.S. citizenship.
 - (1) Originally, Section 1993, R.S., and earlier laws were interpreted to permit only legitimate children of U.S. citizen fathers to acquire U.S. citizenship by birth abroad.
 - (2) Children born out of wedlock to U.S. citizen fathers were considered to acquire U.S. citizenship at birth only if they were subsequently legitimated under the laws of the State of the father's domicile. Once legitimated, they were regarded as having been born citizens of the United States (32 Op. Atty. Gen. 162).
 - (3) The Department and the Immigration and Naturalization Service interpreted "state" to include both U.S. States and foreign countries.
- b. The Department holds that persons born abroad out of wedlock to U.S. citizen fathers and alien mothers when Section 1993 R.S. was in effect acquired U.S. citizenship under that section of law upon legitimation under the laws of the father's domicile even when the legitimation occurred after the person's majority or after repeal of Section 1993 R.S., as long as the state law set no age limits on legitimation.

7 FAM 1135.3-2 To American Mother

(TL:CON-68; 04-01-1998)

- a. In about 1912, the Department began to hold that a child born out of wedlock to a U.S. citizen mother (before May 24, 1934), acquired U.S. citizenship through the mother if she previously had resided in the United States. It was considered that in the absence of a legally recognized father, the mother, as the sole parent, would have the rights normally attributed to a U.S. citizen father. This also avoided statelessness for the child.
- b. This view was overruled in 1939 by the Attorney General who stated that in such cases Section 1993, R.S., must be held to preclude transmission of citizenship because Section 1993 R.S., as originally enacted, did not permit women to transmit citizenship (39 Op. Atty. Gen. 290).
- c. The Attorney General, who recognized the harshness inherent in his holding, expressed hope that legislative relief could be given retroactively. This was done in section 205 NA (see 7 FAM 1134.5-4).

7 FAM 1135.4 Absence of Retention Requirements Before May 24, 1934

(TL:CON-68; 04-01-1998)

- a. There have never been retention requirements for persons born abroad before May 24, 1934. Some misunderstanding about this may exist because in 1907 Congress imposed requirements on U.S. citizen residing abroad who acquired citizenship under 1993 and who wished to avail themselves of the protection of the United States Government. Section 6 of the Act of March 2, 1907, stated that: all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of (Sec. 1993 R.S.) and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States, and shall be further required to take an oath of allegiance to the United States upon attaining their majority.
- b. Section 6 related only to whether consular protection would be provided. Failure to register one's intention to remain a citizen and to take an oath of allegiance had no effect on the retention of citizenship, although it did mean that the person would not be treated as a citizen for consular protection purposes while abroad.

7 FAM 1135.5 Proof of Claim to U.S. Citizenship Under Section 1993 Revised Statutes (R.S.), As Originally Enacted

(TL:CON-68; 04-01-1998)

Section 1993 R.S., as originally enacted, applied only to persons whose fathers were U.S. citizens. While it was in effect, it provided the only means by which a child born abroad could acquire U.S. citizenship. Due to the retroactive application of section 301(h) INA, evidence to prove a claim to U.S. citizenship now for persons born prior to May 24, 1934 is the same as that listed in 7 FAM 1135.9 b.

7 FAM 1135.6 Section 1993, R.S., As Amended by Act of May 24, 1934

7 FAM 1135.6-1 Text of Amended Law

(TL:CON-68; 04-01-1998)

- a. Section 1993 R.S. was amended in 1934 to permit American women to transmit U.S. citizenship to their children born abroad and to impose retention requirements on all children born abroad to one U.S. citizen parent and one

alien parent.

- b. The amended Section 1993 (48 Stat. 797), went into effect on May 24, 1934, at noon Eastern Standard Time. It stated that: Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization.

7 FAM 1135.6-2 Effect of Amendment

(TL:CON-68; 04-01-1998)

- a. The second sentence raised a question whether a child born abroad to one U.S. citizen and one alien acquired citizenship at birth (subject to losing citizenship later if the residence and oath requirement were not met), or, was born an alien and acquired citizenship only after completing 5 years residence in the United States before reaching age 18 and taking the prescribed oath of allegiance.
- b. On July 21, 1934, the Attorney General held that, "the two conditions described in the Act... must be regarded as conditions subsequent and not conditions precedent." (38 Op. Atty. Gen. 10, 17-18).
- c. Thus the conditions in the second sentence of section 1993 were established as requirements for retention rather than acquiring citizenship.

7 FAM 1135.7 Children Born Out of Wedlock from May 24, 1934, through January 12, 1941

7 FAM 1135.7-1 To American Father

(TL:CON-68; 04-01-1998)

- a. The requirements for acquiring U.S. citizenship at birth out of wedlock to an American father were not affected by the amendment of Section 1993, R.S., and remained as set forth in 7 FAM 1135.3-1.
- b. Upon legitimation, children born on or after May 24, 1934, became subject to the retention requirements of Section 1993 R.S., as amended, or of its successor laws.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- c. Persons past the age of possible compliance with the retention requirements when their citizenship was perfected were held not to have jeopardized their citizenship by their failure to comply with any applicable retention requirements.

7 FAM 1135.7-2 To American Mother

(TL:CON-68; 04-01-1998)

- a. On May 10, 1939, the Attorney General indicated (39 Op. Atty. Gen. 290) that it was not clear that children born abroad out of wedlock to American women acquired U.S. citizenship and that new legislation was desirable to clarify their status. However, the Department and the Immigration and Naturalization Service have held administratively that children born out of wedlock to American women while Section 1993 R.S., as amended, was in effect acquired U.S. citizenship at birth if their mothers previously had resided in the United States (4 I. & N. Dec. 440 (1951)).
- b. The retention requirements do not apply to persons who acquired U.S. citizenship under Section 1993, R.S., as amended, through birth abroad out of wedlock to a U.S. citizen woman (7 I. & N. 523).
- c. The Department and the Immigration and Naturalization Service both hold that the legitimation after January 13, 1941, of a child who acquired U.S. citizenship through birth abroad out of wedlock to an American mother between May 24, 1934, and January 13, 1941, does not affect in any way the citizenship status that the child acquired at birth. Even if the child is legitimated by an alien father, the retention requirements do not apply.
- d. To clarify the status of children born out of wedlock to American women, section 205 of the Nationality Act of 1940 was made retroactive except to children legitimated before January 13, 1941.

7 FAM 1135.8 Retention of U.S. Citizenship Acquired Under Section 1993 R.S., As Amended by Act of May 24, 1934

(CT:CON-349; 12-13-2010)

- a. When it amended Sec 1993 R.S. to give women the right to transmit U.S. citizenship to their foreign-born children, Congress was concerned that a child with one citizen and one alien parent might have divided loyalties, particularly if the father was an alien through whom the child had acquired foreign nationality. To reduce conflicting ties of allegiance and to ensure that foreign-born children would regard themselves as Americans, Section 1993 R.S., as amended, required such children to reside in the United States for at least 5 years before reaching age 18 and to take an oath of allegiance to the United States within 6 months after reaching age 21 or forfeit their citizenship.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- b. The retention requirements did not apply if both parents were U.S. citizens or if the child had been born out of wedlock to a U.S. citizen woman. In such cases, it was felt that foreign influences and ties would be less likely to occur.
- c. No one ceased to be a citizen because of the retention requirements of Section 1993 R.S., as amended. This was because the Nationality Act of 1940 (NA) went into effect long before any child born on or after May 24, 1934, and subject to the retention requirements of Section 1993 R.S., as amended, could have complied with both of the conditions needed to retain citizenship. Section 201(h) NA applied the requirements of section 201(g) NA for retaining citizenship to persons born abroad on or after May 24, 1934 (see 7 FAM 1100 Appendix L). Section 301(c) of the Immigration and Nationality Act of 1952, as originally enacted, made the retention provisions of section 301(b) INA, as originally enacted, applicable to such persons who did not comply with the retention provisions of section 201(g) NA (see 7 FAM 1100 Appendix L).

7 FAM 1135.9 Evidence of Claim to Citizenship Under Section 1993 R.S., as Amended

(CT:CON-367; 04-08-2011)

- a. The evidence to establish citizenship claims is described briefly in 22 CFR 50.2-50.5 and in more detail in 22 CFR 51.42 and 22 CFR 51.43. 22 CFR 51.45 specifies that an applicant may be required "to submit other evidence deemed necessary to establish his or her U.S. citizenship or nationality."
- b. Evidence to establish acquisition of U.S. citizenship under Section 1993 R.S., as amended, would consist of:
 - (1) A birth certificate or other evidence of the child's birth to a U.S. citizen mother, father, or both;
 - (2) If applicable, the parents' marriage certificate or other evidence of the child's legitimacy or legitimation;
 - (3) Proof of at least one parent's U.S. citizenship; and
 - (4) Evidence of that parent's residence in the United States at any time before the child's birth.
- c. Persons born to one citizen and one alien parent must also prove that they met or have been exempted from applicable retention requirements.

7 FAM 1136 THROUGH 1139 UNASSIGNED

7 FAM Exhibit 1133.3-3

International Organizations Designated by Executive Order (As of August 15, 1997)

(CT:CON-421; 10-05-2012)

African Development Bank (E.O. 12403, Feb. 8, 1983).

African Development Fund (E.O. 11977, Mar. 14, 1977).

Asian Development Bank (E.O. 11334, Mar. 7, 1967).

Border Environmental Cooperation Commission, E.O. 12904, Mar. 16, 1994).

Caribbean Commission (E.O. 10025, Dec. 30, 1948; revoked by E.O. 10983, Dec. 30, 1961).

Caribbean Organization (E.O. 10983, Dec. 30, 1961.)

Coffee Study Group (E.O. 10943, May 19, 1961; revoked by E.O. 12033, Dec. Jan 10, 1978).

Commissions for Environmental Cooperation (E.O. 12904, March 16, 1994).

Commission for Labor Cooperation (E.O. 12904, Mar. 16, 1994).

Commission for the Study of Alternatives to the Panama Canal (E.O. 12567, Oct. 2, 1986).

Customs Cooperation Council (E.O. 11596, June 5, 1971).

European Bank for Reconstruction and Development (E.O. 12766, June 18, 1991)

European Space Agency (formerly European Research Organization (E.O. 11318, Dec. 5, 1966; E.O. 12766, Jun. 18, 1991).

Food and Agriculture Organization (E.O. 9698, Feb. 19, 1946).

Great Lakes Fishery Commission (E.O. 11059, Oct. 23, 1962).

Hong Kong Economic and Trade Offices, E.O. 13052, Jun. 30, 1997).

Inter-American Coffee Board (E.O. 9751, July 11, 1946; revoked by E.O. 10083, Oct. 10, 1949).

Inter-American Defense Board (E.O. 10228, Mar. 26, 1951).

Inter-American Development Bank (E.O. 10873, Apr. 8, 1960).

Inter-American Institute for Cooperation on Agriculture (formerly known as Inter-American Institute of Agricultural Sciences) (E.O. 9751, July 11, 1946).

Inter-American Investment Corporation (E.O. 12567, Oct. 2, 1986).

Inter-American Statistical Institute (E.O. 9751, July 11, 1946).

Inter-American Tropical Tuna Commission (E.O. 11059, October 23, 1962).

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Intergovernmental Committee on Refugees (E.O. 9823, Jan. 24, 1947; revoked by E.O. 10083, Oct. 10, 1949).

International Maritime Organization (formerly Intergovernmental Maritime Consultative Organization (E.O. 10795, Dec. 13, 1958).

Interim Communications Satellite Committee (E.O. 11227, June 2, 1965; revoked by E.O. 11718, May 14, 1973).

Interim Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).

International Bank for Reconstruction and Development (E.O. 9751, July 11, 1946).

International Boundary and Water Commission-The United States and Mexico, (E.O. 12467, Mar. 2, 1984). .

International Centre for Settlement of Investment Disputes (E.O. 11966, Jan. 19, 1977; designation retroactive to Nov. 24, 1976).

International Civil Aviation Organization (E.O. 9863, May 31, 1947).

International Coffee Organization (E.O. 11225, May 22, 1965).

International Committee of the Red Cross (E.O. 12643, June 23, 1988).

International Cotton Advisory Committee (E.O. 9911, December 19, 1947).

International Cotton Institute, now known as International Institute for Cotton (E.O. 11283, May 27, 1966).

International Criminal Police Organization (INTERPOL) (E.O. 12425, June 16, 1983).

International Development Association (E.O. 11966, Jan. 19, 1977; designation retroactive to Nov. 24, 1976).

International Development Law Organization, (E.O. 12842, Mar. 29, 1993).

International Fertilizer Development Association (E.O. 11977, Mar. 14, 1977).

International Finance Corporation (E.O. 10680, Oct. 2, 1956).

International Food Policy Research Institute (E.O. 12359, Apr. 22, 1982).

International Fund for Agricultural Development (E.O. 12732, Oct. 31, 1990).

International Hydrographic Bureau (E.O. 10769, May 29, 1958).

International Institute for Cotton (see International Cotton Institute).

International Joint Commission--United States and Canada (E.O. 9972, June 25, 1948).

International Labor Organization (Functions through staff known as The International Labor Office) (E.O. 9698, Feb. 19, 1946).

International Maritime Satellite Organization (E.O. 12238, Sept. 12, 1980).

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

International Monetary Fund (E.O. 9751, July 11, 1946).

International Organization for Migration (formerly the Provisional Intergovernmental Committee for the Movement of Migrants for Europe and the Intergovernmental Committee for European Migration) (E.O. 10335, Mar. 28, 1952).

International Pacific Halibut Commission (E.O. 11059, Oct. 23, 1962).

International Refugee Organization (see Preparatory Commission of the International Refugees Organization).

International Secretariat for Volunteer Service (E.O. 11363, July 20, 1967).

International Telecommunication Union (E.O. 9863, May 31, 1947).

International Telecommunications Satellite Consortium (E.O. 11277, Apr. 30, 1966; revoked by E.O. 11718, May 14, 1973).

International Telecommunications Satellite Organization (INTELSAT) (E.O. 11718, May 14, 1973; redesignated by E.O. 11966, Jan. 19, 1977, which revoked E.O. 11718 with redesignation retroactive to Nov. 24, 1976).

International Union for Conservation of Nature and Natural Resources, (limited privileges), (E.O. 12986, Jan. 18, 1996).

International Wheat Advisory Committee (International Wheat Council) (E.O. 9823, Jan. 24, 1947).

Israel-United States Binational Industrial Research and Development Foundation, (E.O. 12956, Mar. 13, 1995).

Korean Peninsula Energy Development Organization, (E.O. 12997, Apr. 1, 1996).

Lake Ontario Claims Tribunal (E.O. 11372, Sept. 18, 1967; revoked by E.O. 11439, Dec. 7, 1968).

Multilateral Investment Guarantee Agency (E.O. 12647, 1 Aug. 2, 1988).

Multinational Force and Observers (E.O. 12238, Sept. 12, 1980).

North American Development Bank, (E.O. 12904, Mar. 16, 1994).

North Pacific Anadromous Fish Commission (E.O. 12895, January 26, 1994)

North Pacific Marine Science Organization (E.O. 12895, January 26, 1994)

Organization for European Economic Cooperation (E.O. 10133, June 27, 1950) (now known as Organization for Economic Cooperation and Development; 28 FR 2959, Mar. 26, 1963).

Organization of African Unity (OAU) (E.O. 11767, Feb. 19, 1974).

Organization of American States (E.O. 10533, June 3, 1954) (Includes Pan American Union—E.O. 9698, July 12, 1946).

Organization of Eastern Caribbean States (E.O. 12669, Feb. 20, 1989).

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Organization for the Prohibition of Chemical Weapons, (E.O. 13049, Jun. 11, 1997).

Pacific Salmon Commission (E.O. 12567, Oct. 2, 1986).

Pan American Health Organization (E.O. 10864, Feb. 18, 1960) (Includes Pan American Sanitary Bureau--E.O. 9751, July 12, 1946).

Pan American Union (see Organization of American States).

Preparatory Commission of the International Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).

Preparatory Commission of the International Refugee Organization and its successor, the International Refugee Organization (E.O. 9887, Aug. 22, 1947; revoked by E.O. 10832, Aug. 19, 1959).

Provisional Intergovernmental Committee for the Movement of Migrants from Europe (see Intergovernmental Committee on Refugees).

Southeast Asia Treaty Organization (E.O. 10866, Feb. 20, 1960; revoked by E.O. 12033, Jan. 10, 1978).

South Pacific Commission (E.O. 10086, Nov. 25, 1949).

United International Bureau for the Protection of Intellectual Property (BIRPI) (E.O. 11484, Sept. 29, 1969).

United Nations (E.O. 9698, Feb. 19, 1946).

United Nations Educational, Scientific, and Cultural Organization (E.O. 9863, May 31, 1947).

United Nations Industrial Development Organization (E.O. 12628, Mar. 8, 1988).

United Nations Relief and Rehabilitation Administration (E.O. 9698, Feb. 19, 1946; revoked by E.O. 10083, Oct. 10, 1949).

Universal Postal Union (E.O. 10727, Aug. 31, 1957).

World Health Organization (E.O. 10025, Dec. 30, 1948).

World Intellectual Property Organization (WIPO) (E.O. 11866, June 18, 1975).

World Meteorological Organization (E.O. 10676, Sept. 1, 1956).

World Tourism Organization (E.O. 12508, Mar. 22, 1985).

World Trade Organization (E.O. 13042, Apr. 9, 1997).

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

7 FAM Exhibit 1133.4-2(A)

**Child Born Out of Wedlock to a U.S. Citizen Father
and Alien Mother: Determining Whether to Use
Old 309(a) or New(a) INA**

(TL:CON-68; 04-01-1998)

Date of Birth	Applicable Statute	Age by which "Legitimation" Must Occur	Date by which "Legitimation" Must Occur	Statement of Support Required
On or before 11/14/68	Old Section 309(a)	21	11/14/89	No
After 11/14/68 and	Old Section 309(a)	21	11/14/92	No
On or before 11/14/71	New Section 309(a)	18	11/14/89	Yes
After 11/14/71 and	Old Section 309(a)	15	11/14/86	No
Before 11/14/86	New Section 309(a)	18	11/14/04	Yes
On or After 11/14/86	New Section 309(a)	18	None	Yes

NOTE: The term "LEGITIMATION" in the headings refers only to the statutory procedure required to establish the relationship between the U.S. citizen father and his child for purposes of acquiring citizenship.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

**SUMMARY OF THE LEGITIMATION LAWS OF THE STATES OF THE UNITED STATES
(as of 10/18/93)**

INTRODUCTION

The Bureau of Consular Affairs compiled the following information on state laws relating to legitimation as understood by the Department as of October 18, 1993. It is not definitive and cannot substitute for actual reference to the laws in question when necessary. The subject of legitimation is not an easy area of the law to research. Even if the respective state codes were readily available, state laws on this topic often are not well indexed or cross-referenced. Moreover, statutes relating to legitimation can be scattered in chapters pertaining to minors, estates, marriage, and divorce.

The varying terminology employed by individual state codes also can render this subject difficult. A child born out of wedlock may be referred to in statute as "illegitimate" or, in older statutes, a "bastard." Similarly, a child who has been legitimated may be called "acknowledged" or "recognized." Many states, particularly those which subscribe to the Uniform Parentage Act, simply refer to the establishment of the parent child relationship, a concept intended to be synonymous with legitimation as that term traditionally has been used.

Since the 1993, state laws governing the legitimation of children have undergone many changes. Most of these changes can be read as "liberalizing" the laws that result in a child being placed in a position identical, or substantially identical, to that of a child born in wedlock. In this context, "liberalization" means making less stringent the requirements for legitimation or providing additional means by which legitimation can be accomplished.

While the laws of every state are different, there are some major similarities. The laws of every state declare that the subsequent intermarriage of a child's natural (biological) parents serves to legitimate the child. A few states impose conditions in this regard. Further, the laws of every state make legitimate the child of a void marriage with a few states adding conditions. A number of states have enacted statutes that categorically declare that the existence of a biological relationship between a father and his child in and of itself establishes a legal relationship between the two, without regard to the marital status of the parents. Finally, almost every state provides means by which a child can be legitimated in the absence of a marriage of the parents. A post should contact CA/OCS/PRI if it has questions about the application of these statutes to an individual case.

CA/OCS/PRI can attempt to confirm the current provision of the law of the state in question, if necessary. This is particularly important to do if the post is otherwise prepared to conclude that a citizenship claim of a child born out wedlock should be denied on the grounds that a statute does not serve to legitimate a child.

Please note that the effective date of each statute listed is enclosed in parentheses at the end of the item.

I. IS A CHILD LEGITIMATED BY THE SUBSEQUENT INTERMARRIAGE OF

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

ITS PARENTS?

1. ALABAMA - Yes, if child is recognized by natural father. Section 26-11-1 of Alabama Code. (1993)
2. ALASKA - Yes. Section 25.20.050 of Alaska Statutes (1993)
3. ARIZONA - Yes. Section 8-601 of Arizona Revised Statutes. (1992)
4. ARKANSAS - Yes. Section 28-9-209 of the Arkansas Statutes. (1992)
5. CALIFORNIA - Yes, if in addition to the marriage the father: (1) Consents to being named as the father on the child's birth certificate or (2) Is obligated to support the child under a voluntary written promise or by court order. Section 7004(a)(3) of California Civil Code. (1992)
6. COLORADO - Yes. Section 19-4-103 and 19-4-105 of Colorado Revised Statutes.(1992)
7. CONNECTICUT - Yes. Section 45a-438(b)(1) of Connecticut General Statutes. (1992)
8. DELAWARE - Yes. Section 1301 of Title 13 of Delaware Code. (1988)
9. DISTRICT OF COLUMBIA - Yes. Sections 16-907 and 16-908 Code of District of Columbia. (1993)
10. FLORIDA - Yes. Section 742.091 of Florida Statutes. (1992)
11. GEORGIA - Yes, if the father recognizes the child as his. Section 19-7-20 of Code of Georgia. (1993)
12. HAWAII - Yes. Sections 338-21 and 584-2 of Hawaii Revised Statutes. (1991)
13. IDAHO - Yes. Section 32-1006 of Idaho Code. (1992)
14. ILLINOIS - Yes. Chapter 40, Sections 2502 and 2505 of Illinois Revised Statutes. (1993)
15. INDIANA - Yes, if putative father marries the mother of the child and acknowledges the child to be his own. Section 29-1-2-7 of the Indiana Statutes. (1992)
16. IOWA - Yes. Section 595.18 of Code of Iowa. (1993)
17. KANSAS - Yes. Sections 38-1112 and 38-1114 of Kansas Revised Statutes. (1990)
18. KENTUCKY - Yes, if the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void. Section 391.105 of Kentucky Revised Statutes. (1989)
19. LOUISIANA - Yes, when the child has been formally or informally acknowledged by both parents, whether before or after the marriage. Article 198 of Louisiana Civil Code. (1992)

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

20. MAINE - Yes. Title 18-A Section 2-109(2)(1) of Maine Revised Statutes. (1992)
21. MARYLAND - Yes, if the father has acknowledged himself, orally or in writing, to be the father. Section 1-208 of Estates and Trusts Code of Maryland. (1993)
22. MASSACHUSETTS - Yes, if acknowledged by father or ordered by court. Chapter 190, Section 7 of Massachusetts General Laws. (1992)
23. MICHIGAN - Yes. Sections 27.5111 and 25.107 of Michigan Compiled Laws Annotated. (1991)
24. MINNESOTA - Yes. Section 257.55 and 257.52 of Minnesota Statutes. (1992)
25. MISSISSIPPI - Yes. An illegitimate child is legitimated if the natural father marries the natural mother and acknowledges the child. Section 93-17-1 of Mississippi Code. (1991)
26. MISSOURI - Yes. If father acknowledges that child is his. Section 474.070 of Missouri Revised Statutes. (1992)
27. MONTANA - Yes. Section 40-6-203 of Montana Code. (1989)
28. NEBRASKA - Yes. Section 43.1409 of Revised Statutes of Nebraska. (1991)
29. NEVADA - Yes. Section 122.140 of Nevada Revised Statutes. (1992)
30. NEW HAMPSHIRE - Yes. Section 457.42 of New Hampshire Revised Statutes Annotated. (1989)
31. NEW JERSEY - Yes. Sections 9:17-39, 9:17-40 and 9:17-43 of Revised Statutes of New Jersey (1992)
32. NEW MEXICO - Yes. Section 45-2-109 of New Mexico Statutes. (1992)
33. NEW YORK - Yes. Article 3, Section 24 of Consolidated Laws of New York. (1992)
34. NORTH CAROLINA - Yes. Section 49-12 General Statutes of North Carolina. (1989)
35. NORTH DAKOTA - Yes. Section 14-09-02 of North Dakota Century Code. (1989)
36. OHIO - Yes. Section 3111.03 of Ohio Revised Code. (1992)
37. OKLAHOMA - Yes. Title 10 Section 2 of Oklahoma Statutes Annotated. (1992)
38. OREGON - Yes. Section 109.070(3) to be read in combination with Section 109.060 of Oregon Revised Statutes. (1991)
39. PENNSYLVANIA - Yes. Pa.C.S.A. 20 Sec. 2107 and 23 Pa.C.S.A. Sec. 5101 of Purdon's Pennsylvania Statutes Annotated. (1992)

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

40. RHODE ISLAND - Yes. Section 33-1-8 of General Laws of Rhode Island. (1992)
41. SOUTH CAROLINA - Yes. Section 20-1-60 of Code of Laws of South Carolina. (1990)
42. SOUTH DAKOTA - Yes. Section 29-1-15.1 of South Dakota Codified Laws. (1992)
43. TENNESSEE - Yes. Section 36-2-207 of Tennessee Code Annotated. (1992)
44. TEXAS - Yes. Title 2, Section 12.01 and 12.02 of Texas Code Annotated. (1992)
45. UTAH - Yes. Section 75-2-109(2)(a) of Utah Code Annotated. (1992)
46. VERMONT - Yes, if the child is recognized by the father. Title 14 Section 554 of Vermont Statutes Annotated. (1993)
47. VIRGINIA - Yes. Section 20-31.1 of Code of Virginia (1992)
48. WASHINGTON - Yes. Section 26.26.040(c) of the Revised Code of Washington. (1992)
49. WEST VIRGINIA - Yes. Section 42-1-6 of Michie's West Virginia Code. (1989)
50. WISCONSIN - Yes. Section 767.60 of Wisconsin Statutes (1992)
51. WYOMING - Yes, if in addition to the marriage, the father is obligated to support the child under a written voluntary promise or by court. Section 14-2-102 and 14-2-101 Wyoming Statutes. (1993)

TERRITORIES

1. GUAM - Yes. Title II, Chapter 1, Section 215. Guam Civil Code. (1970)
2. PUERTO RICO - Yes. Title 31, Section 442, Puerto Rico Civil Code. (1988)
3. VIRGIN ISLANDS - Yes. Title 16, Section 461 of Virgin Islands Code Annotated. (1993)

II. IS ISSUE OF A VOID MARRIAGE LEGITIMATE?

1. ALABAMA - Yes. Section 26-17-3 & 5 of Alabama Code. (1993)
2. ALASKA - Yes. Section 25.05.050 and 25.05.051 Alaska Statutes. (1992)
3. ARIZONA - Yes. Section 8-601 of Arizona Revised Statutes. (1992)
4. ARKANSAS - Yes. Section 28-9-209 of Arkansas Statutes (1992)
5. CALIFORNIA - Yes. Section 7001 and 7004 of California Civil Code. (1992)
6. COLORADO - Yes. Section 19-4-103 and 19-4-105 of Colorado Revised Statutes. (1992)
7. CONNECTICUT - Yes. Section 46b-60 of Connecticut Statutes. (1993)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

8. DELAWARE - Yes. Title 13, Section 105 of Delaware Code. (1992)
9. DISTRICT OF COLUMBIA - Yes. A child born in or out of wedlock is the legitimate child of mother and father and is legitimate relative of their relatives by blood or adoption. 16-908 of the D.C. Code. (1993)
10. FLORIDA - Yes. Section 732.108(2)(a) of Florida Statutes. (1992)
11. GEORGIA - Yes. Section 19-5-15 of the Code of Georgia. (1993)
12. HAWAII - Yes. Section 580-27 of Hawaii Revised Statutes. (1991)
13. IDAHO - Yes, if marriage is void for any reason other than for fraud whereby the wife is pregnant with the child of a man other than her husband. Section 32-503 of Idaho Code. (1992)
14. ILLINOIS - Yes. Chapter 40, Section 303 of Illinois Revised Statutes. (1992)
15. INDIANA - Yes, Sections 31-7-8-5 of Indiana Statutes. (1992)
16. IOWA - Yes. Section 598.31 of Code of Iowa. (1993)
17. KANSAS - Yes. Section 38-1113 and 38-1114 of Kansas Statutes Annotated. (1990)
18. KENTUCKY - Yes. Section 391.100 of Kentucky Revised Statutes. (1989)
19. LOUISIANA - Yes, except in cases of incest. Article 198 of Louisiana Civil Code. (1992)
20. MAINE - Yes. Title 19, Section 633 of Maine Revised Statutes. (1992)
21. MARYLAND - Yes. Section 1-206 of Estates and Trusts Code of Maryland. (1993)
22. MASSACHUSETTS - Yes. Chapter 207, Sections 14-17. Annotated Laws of Massachusetts. (1992)
23. MICHIGAN - Yes, Section 25.108 and 25.109 of Michigan Statutes Annotated. (1991)
24. MINNESOTA - Yes. Section 257.54 and 257.54 of Minnesota Statutes. (1992)
25. MISSISSIPPI - Yes. See Section 93-7-5 of Mississippi Code. (1992)
26. MISSOURI - Yes. Section 474.080 of Missouri Statutes. (1992)
27. MONTANA - Yes. Sections 40-6-104 and 40-6-105 of Montana Code Annotated. (1989)
28. NEBRASKA - Yes. Section 42-377 of Revised Statutes of Nebraska. (1991)
29. NEVADA - Yes. Section 125.410 of Nevada Revised Statutes. (1992)
30. NEW HAMPSHIRE - Yes, child considered legitimate unless court explicitly states otherwise. Section 458.23 of New Hampshire Revised Statutes

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Annotated. (1989)

31. NEW JERSEY - Yes. Section 9:17-40 of Revised Statutes of New Jersey. (1992)
32. NEW MEXICO - Yes. Section 45-2-109(B)(1) of New Mexico Statutes. (1992)
33. NEW YORK - Yes. Article 3, Section 24, Note 6 of Consolidated Laws of New York. (1992)
34. NORTH CAROLINA - Yes. Section 50-11.1 of North Carolina General Statutes. (1989)
35. NORTH DAKOTA - Yes. Section 14-04-03 of North Dakota Code. (1989)
36. OHIO - Yes. Sections 3111.02 and 3111.03 of Ohio Revised Code. (1992)
37. OKLAHOMA - Yes. Title 10 Section 1.2 of Oklahoma Statutes. (1992)
38. OREGON - Yes. Sections 106.190 and 106.210 of Oregon Revised Statutes. (1991)
39. PENNSYLVANIA - Yes. Section 23 Pa.C.S.A., section 5102 of Purdon's Pennsylvania Statutes Annotated.(1992)
40. RHODE ISLAND - Yes. Section 15-8-3 of General Laws of Rhode Island. (1992)
41. SOUTH CAROLINA - Yes. Section 20-1-80 and 20-1-90 of Code of Laws of South Carolina.
42. SOUTH DAKOTA - Yes. Section 25-3-3 of South Dakota Codified Laws. (1992)
43. TENNESSEE - Yes, if the father recognizes the child as his. Section 36-2-207 of Tennessee Code Annotated. (1992)
44. TEXAS - Yes. Title 2, Section 12.01 and 12.02 of Texas Code Annotated. (1992)
45. UTAH - Yes. Section 30-1-17.2 of Utah Code Annotated. (1992)
46. VERMONT - Yes. Title 15, Section 520 of Vermont Statutes Annotated. (1993)
47. VIRGINIA - Yes. Section 20-31.1 of Code of Virginia. (1992)
48. WASHINGTON - Yes. Section 26.26.030 and 26.26.040. (1992)
49. WEST VIRGINIA - Yes. Section 42-1-7 of West Virginia Code. (1992)
50. WISCONSIN - Yes. Section 767.60 of Wisconsin Statutes. (1992)
51. WYOMING - Yes. Sections 14-2-101 and 14-2-102 of Wyoming Statutes. (1989)

TERRITORIES

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

1. GUAM - Yes. Article I, Section 84 of Guam Civil Code. (1970)
2. PUERTO RICO - Yes. Title 31, Section 412a. Puerto Rico Civil Code. (1988)
3. VIRGIN ISLANDS - Yes. Title 16, Section 461 of Virgin Islands Code Annotated. (1993)

III. CAN A CHILD BE LEGITIMATED IN A MANNER NOT INVOLVING THE INTERMARRIAGE OF THE NATURAL PARENTS?

1. ALABAMA - Yes, by the father (1) making a declaration in writing (2) attested to by 2 witnesses (3) setting forth the name, sex, supposed age, and name of the mother and (4) recognizing that it is his child. Section 26-11-2 of Alabama Code or if the father admits a paternity complaint or is found to be the father. (1993)
2. ALASKA - Yes, if putative parent acknowledges being a parent of the child in writing. Section 25.20.050(a)(2) of Alaska Statutes. (1993)
3. ARIZONA - Yes, Arizona law states that every child is the legitimate child of its natural parents and entitled as such to support and education as if born in lawful wedlock. Thus, if satisfied as to paternity, the child may be regarded as a legitimate child of the natural father under Arizona law. Section 8-601 of Arizona Statutes. (1992)
4. ARKANSAS - No. Section 28-9-209 of Arkansas Statutes.
5. CALIFORNIA - Yes, if father receives the child into his home as well as openly holds it out as his own. Section 7004(a)(4) of California Civil Code. (1992)
6. COLORADO - Yes, if while the child is a minor, the father receives the child into his home and openly holds the child as his natural child. Section 19-4-105 of Colorado Revised Statutes. (1992)
7. CONNECTICUT - Yes, by written affirmation of paternity by father; or by court decree. Section 45(a)-438 of Connecticut Code. (1993)
8. DELAWARE - Yes, by acknowledgement of parentage in writing by either parent and filed in Prothonotary's office in any county in the State. Title 13, Sec. 1301 of Delaware Code. (1988)
9. DISTRICT OF COLUMBIA - Yes. Sections 16-907 and 16-908 Code of District of Columbia, as amended on April 7, 1977. (1993)
10. FLORIDA - Yes. Paternity may be acknowledged in writing thereby legitimizing a child born out-of-wedlock. Section 732-108 of Florida Statutes. (1992)
11. GEORGIA - Yes, if father does so by petitioning superior court in county of his residence setting forth child's name, age, sex and the name of the mother. Section 19-7-22 of the Code of Georgia. (1993)
12. HAWAII - Yes, if father and mother acknowledges paternity in writing.

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Sections 584-2 and 338-21(a)(2) of Hawaii Revised Statutes. (1991)

13. IDAHO - Yes, if father (1) acknowledges child as his and (2) receives it into his family as such, with the consent of his wife if he is married. Section 16-1510 of Idaho Code. (1992)
14. ILLINOIS - Yes. Parent child relationship is not dependent on marriage. Chapter 40, Sections 2502 and 2503 of Illinois Revised Statutes. (1992)
15. INDIANA - Yes, if paternity of child has been established by law during father's life-time. Section 29-1-2-7 of the Indiana Statutes. (1992)
16. IOWA - Yes, by adoption. Sections 600.4 and 600.13 of Code of Iowa. (1993)
17. KANSAS - Yes, if the father notoriously or in writing recognizes his paternity of the child. Section 38-1114 (4) of Kansas Statutes Annotated. (1990)
18. KENTUCKY - Yes. A child adopted by a natural father is considered the natural child of the adopting parents the same as if born of their bodies. Sections 199.470 and 199.520 of Kentucky Revised Statutes. (1989)
19. LOUISIANA - Yes, a child may be legitimated by notarial act. Art. 200 of Louisiana Civil Code. (1992)
20. MAINE - Yes, if (1) the father adopts the child into his family. Under Title 18-A Section 2-109(ii) of Maine Revised Statutes or (2) the father acknowledges that he is the father of the child before a notary public or justice of the peace or (3) there is an adjudication to this effect before a court or (4) by a court after the father's death on the basis of clear and convincing evidence. Title 18-A Section 2-109(2) (iii) of Maine Revised Statutes. (1992)
21. MARYLAND - Yes, if father (1) has acknowledged himself to be father in writing or (2) has openly and notoriously recognized the child as his or (3) has been found to be the father after judicial paternity proceedings. Section 1-208 of Estates & Trusts Code of Maryland (several Maryland court decisions have said this constitutes legitimation for all purposes.) (1993)
22. MASSACHUSETTS - No. An illegitimate child can be acknowledged but this does not legitimate. Chapter 190 Sec. 7 of Annotated Laws of Massachusetts. (1992)
23. MICHIGAN - Yes. Section 25.107 of Michigan Compiled Laws Annotated. (1991)
24. MINNESOTA - Yes, if while the child is a minor the father receives the child into his home and openly holds out the child as his own. Section 257.52 and 257.55 of Minnesota Statutes. (1992)
25. MISSISSIPPI - Yes, but only by specific decree of Chancery Court. Section

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

93-17-1 of Mississippi Code. (1991)

26. MISSOURI - Yes, when paternity is established and the father has openly treated the child as his and has not refused to support the child. Section 474.060 of Missouri Statutes. (1992)
27. MONTANA - Yes, if (1) the father while the child is a minor receives the child into his home and openly holds it out as his own or (2) acknowledges the child in a writing filed with the department of health provided the child's mother does not dispute the acknowledgement within a reasonable time. Sections 40-6-102 and 40-6-105 of Montana Code Annotated. (1989)
28. NEBRASKA - No. Although a child's paternity can be acknowledged in writing or by providing support, paternity does not appear to be tantamount to legitimacy. Section 13-1409 of Revised Statutes of Nebraska. (1991)
29. NEVADA - Yes, if the father (1) while the child is a minor receives it into his home and openly holds it out as his own or (2) acknowledges the child in a writing filed with the registrar of vital statistics. Sections 126.031 and 126.051 of Nevada Revised Statutes. (1992)
30. NEW HAMPSHIRE - Yes, but only if a court in New Hampshire where the father resides grants a petition legitimating the child in all respects. Section 460.29 of New Hampshire Revised Statutes Annotated. (1989)
31. NEW JERSEY - Yes, by judicial proceedings to establish paternity; under laws of probate; or by a court of competent jurisdiction in another state. Section 9:17 et seq. of Revised Statutes of New Jersey. (1992)
32. NEW MEXICO - Yes, if the father has signed an instrument in writing which on its face is for the purpose of recognizing the child as his heir and such writing is accompanied by proof of "general and notorious recognition" by the father. See 45-2-109 B. (2) of New Mexico Statutes Annotated. (1992)
33. NEW YORK - Yes, if father files acknowledgment of paternity instrument with the New York Department of Social Services, Putative Father Registry. Section 4-1.2 of the New York Estates, Powers and Trusts Law (1992)
34. NORTH CAROLINA - Yes, if done by father's filing a petition so requesting in the Superior Court in North Carolina. Section 49-10 and 49-11 of General Statutes of North Carolina. (1989)
35. NORTH DAKOTA - Yes, if father receives the child into his home while the child is a minor and openly holds out the child as his own. Section 14-17-04(d) of the North Dakota Century Code. (1989)
36. OHIO - Yes, if (1) such acknowledgement is applied for in the probate court of the county where the father or child resides and (2) the mother consents and (3) the court accepts the application, then the child is legitimate for all

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

purposes. Section 2105.18 of Ohio Revised Code. (1992)

37. OKLAHOMA - Yes. All children born in Oklahoma are legitimate after July 1, 1974. Title 10 Section 1.2 of Oklahoma Statutes. (1992)
38. OREGON - Yes. See section 109.060 of Oregon Revised Statutes. (1991)
39. PENNSYLVANIA - Yes, (a) if during the lifetime of the child, the father openly holds out the child to be his own and either (1) receives it into his home or (2) provides support for the child. (b) If there is clear and convincing evidence that the man was the father of the child, which may include a prior court determination of paternity. 20 Pa C.S.A. Sec. 2107 and 23 PaC.S.A. Sec. 5102. Pennsylvania Statutes Annotated. (1992)
40. RHODE ISLAND - Yes, by adoption. Sections 15-7-5 and 15-7-14 of General Laws of Rhode Island. (1992)
41. SOUTH CAROLINA - Yes, an unmarried father may adopt his own illegitimate child. Section 15-45-30 of Code Laws of South Carolina. (1990)
42. SOUTH DAKOTA - Yes, by adoption. Section 25-6-1 of South Dakota Codified Laws. (1992)
43. TENNESSEE - Yes, (a) An application to legitimate a child born out-of-wedlock is made by petition, in writing, signed by the person wishing to legitimate such child, and setting forth the reasons therefor and the state and date of the child's birth. (b) A father may establish paternity of a child born out-of-wedlock by executing a prescribed acknowledgement of paternity before a notary public. The father's name will be entered on the birth certificate and forwarded to the juvenile court for entry of an order of legitimation. Section 36-2-202 of Tennessee Code Annotated. (1992).
44. TEXAS - Yes, if the father consents in writing to be named as the child's father on the child's birth certificate, or before the child reaches the age of majority, the father receives the child into his home and openly holds the child out as his. Title 2, Section 12.01 and 12.02. (1992)
45. UTAH - Yes, if he publicly acknowledges the child as his own, and receives it into his home (with the consent of his wife, if he is married) and otherwise treats it as his own legitimate child. Section 78-30-12 of Utah Code Annotated. (1992)
46. VERMONT - No. Vermont Statutes Annotated. (1993)
47. VIRGINIA - No. Although a child can inherit property if certain circumstances occur, this does not appear to constitute legitimation. Section 64.1-5.2 of Code of Virginia. (1992)
48. WASHINGTON - Yes, if while the child is a minor, the father receives the child into his home openly holds out the child as his own. Section 26.26.040(d) of Revised Code of Washington. (1992)

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

49. WEST VIRGINIA - Yes. The father of a natural child may file an application to establish paternity in circuit court which establishes parent child relationship as though "born in lawful wedlock". Section 48A-6-6 of West Virginia Statutes. (1989)
50. WISCONSIN - Yes. Natural father can adopt his child born out-of-wedlock thereby establishing parent and child relationship with all the rights, duties and other legal consequences. (1993)
51. WYOMING - Yes, if while the child is a minor the father receives the child into his home and holds the child out as his own. Section 14-2-102(iv) of Wyoming Statutes. (1989)

TERRITORIES

1. GUAM - Yes. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. Chapter II, Section 230 of the Guam Civil Code. (1970)
2. PUERTO RICO - Yes. By adoption. An adoptee, for all legal purposes, be considered as a legitimate child of the adopter. Title 31, Sections 532 and 533 of the Puerto Rico Civil Code. (1988)
3. VIRGIN ISLANDS - Yes. The father of an illegitimate by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. Title 16, Section 462 of Virgin Islands Code Annotated. (1993).